Course Description: “Judicial behavior, judicial activism and restraint roles, judicial selection, the social scientific study of the state and federal courts, the politics of law, and the nature and functions of federal court structures with emphasis on the U.S. Supreme Court.” *General Bulletin, 2015-16, p.325*

Class Meeting Days & Times: TR 9:30am - 10:45am
Room: T. E. Ferguson Liberal Arts 374

REQUIRED TEXTS


**THE COURSE**

*There is hardly a political question in the United States which does not sooner or later turn into a judicial one.*

- Alexis de Tocqueville, in *Democracy in America* (1835)

*The language of judicial decision is mainly the language of logic. And the logical method and form flatter that longing for certainty and for repose which is in every human mind. But certainty generally is illusion, and repose is not the destiny of man.*


**COURSE OBJECTIVES**

**Program Learning Outcomes:**
The following program learning outcomes for a political science major are addressed in this course:

PLO #5 – “The student will create research papers, briefs, or reports.”

**Student Learning Outcomes:**
By the end of the course, students will

- To understand the American judicial system – in particular the process and particulars of the United States Supreme Court.
- To describe the basic themes and concepts related to the study decision-making in the Courts.
- To think critically about the political science models and theories of judicial decision-making.
- To apply the methods of political science analytically to a question of decision-making on the Supreme Court.

Students are expected to go beyond rhetoric and ideology to develop critical thinking about the American political system. As a result, students are encouraged to ask questions and to challenge assumptions of class discussions while respecting the logical and reasoned positions of others.

**COURSE OVERVIEW**

The course will survey the different areas of research on judicial politics and the interactions between the judiciary and other institutions. The focus is primarily on empirical/quantitative research, but does include some theory building and case study material. The course combines a look at the historical research in the area from the beginning of the behavioral revolution. The course will not look at case law and will not assess legal or constitutional theory, but will assess the Courts (primarily the federal courts) as political institutions. We will assess measurement issues, address the different debates concerning decision-making, and explore a few issues related to judicial process. In the end the goal is to provide you with a base knowledge of studies of the courts and an understanding of how the courts fit into the American political system both practically and in terms of research.

The thesis that courts are political, policy-making institutions is controversial. Indeed, it is common to hear judges and lawyers alike celebrate judicial decision-making as an automatic and functional derivative of the law itself, as though the law necessarily dictated the path of judicial choice. According to this view, judges are professional, neutral arbiters of the law, and judicial decisions are a matter of applying legal expertise to problems that arise in cases. Precious few political scientists adhere to the belief that courts simply apply the law. Even law professors, who for years were dismissive of empirical legal scholarship, have begun to take an active interest in the quantitative analysis of the judiciary and concede that judges are motivated by more than simply a desire to make sound legal policy.
At the same time, it would be foolhardy to regard the judiciary as interchangeable with the elected branches of the government. The business of the judiciary is very much constrained by the law. As one scholar famously put the matter, “Political scientists who have done so much to put the ‘political’ in ‘political jurisprudence’ need to emphasize that it is still ‘jurisprudence.’ It is judging in a political context, but it is still judging; and judging is something different from legislating or administering.” Of course, where the intersection of law and politics occurs may be uncertain, but the convergence of courts and public policy makes systematic inquiry into judicial decision making a distinctive and fascinating task.

Thus, on a weekly basis, you will be expected to digest various segments of the literature, in articles, books, and treatises, that touch upon some of the leading questions within this subfield: What are the factors that govern the selection of judges at the both the state and federal levels? How does a court with a completely discretionary agenda formulate its plenary docket? Are judges constrained in their behavior because they serve in a judicial capacity? Do judges decide cases based upon other factors, and --- if so --- what are those factors? Under what guises do secondary players engage the courts and with what implications? What is the nature of the relationship between courts and mass opinion? How do courts interact with other publics? How well-suited --- if at all --- is the judiciary to the craft of policy making? And do those policies make any difference to society? By the end of the semester, you should have a fairly firm grasp on some of the leading answers to these questions.

**Evaluation**

1) **Exams.** There will be a Midterm and a Final.

2) **Participation.** You are expected to attend class. Consistent class attendance, reading and preparation, and participation are essential. The language and logic of political science research are complicated, unfamiliar, and hard to follow sometimes. It takes effort to read and understand judicial politics research, and you will need to be prepared for class, listen to my explanations and those of your classmates, ask questions, and discuss the material. Cramming for the exams you will take is all but impossible. I will grade you on your participation and attendance. Furthermore, 3 or more unexcused absences will result in the docking of a letter grade from your final grade in the class. 5 or more unexcused absences will result in you being dropped from the course.

3) **Quizzes.** There will be ten quizzes on the material we are covering in the course administered semi-regularly. These will be administered on D2L. There will be no more than one quiz in a particular quiz. Quizzes are due at 11pm on Sunday of the week in which it is assigned.

4) **Justice paper:** You will choose one of the justices currently sitting on the Supreme Court and write a profile of that justice. Your profile should include background information, including how they came to sit on the Court, their previous occupation, and the Senate’s confirmation vote, as well as any significant information about that justice’s voting behavior, philosophy of judicial interpretation and/or of noteworthy opinions they have written recently. This will require outside research and I expect that you will be aware of the types of information you use and rely on only credible, legitimate sources. This paper will run about 5 substantive pages.

5) **Case paper:** You will choose a case that the Supreme Court has decided with a full opinion in the past 5 years (from January 2011 until January 2016) and provide a study of that case. You should include how the case came to the Court, the major issues involved, the final vote and the reasoning offered in the opinion, relevant political factors (like public opinion on the issue), interest groups that appeared as amici, the actions of the administration in the case, and some summary of the implications of the decisions as seen by prominent journalists and Court-watchers. This will also require outside research and again, I expect that you will rely on legitimate sources. When choosing a case, I suggest that you seriously consider the issues of the case and the complexity of the case - choose a case that interests you and that you understand. This paper will run about 5 substantive pages.

6) **Analytical Paper & Presentation.** This final paper will require you to conduct an analysis of Supreme Court cases, either using qualitative or quantitative methodologies, to assess one or more of the decision-making models we have discussed throughout the course. This paper will be a minimum of 10 substantive pages and a maximum of 15 substantive pages. You will be required to present your results in a presentation at the end of the semester.
WEIGHTING SCALE

<table>
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<td>Justice Paper</td>
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<td>AP Presentation</td>
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GRADING SCALE

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ACADEMIC HONESTY

The following is taken from SFASU’s Policy Manual (2011), section on “Academic Integrity” (A-9). Academic integrity is a responsibility of all university faculty and students. Faculty members promote academic integrity in multiple ways including instruction on the components of academic honesty, as well as abiding by university policy on penalties for cheating and plagiarism.

Definition of Academic Dishonesty: Academic dishonesty includes both cheating and plagiarism. Cheating includes but is not limited to (1) using or attempting to use unauthorized materials to aid in achieving a better grade on a component of a class; (2) the falsification or invention of any information, including citations, on an assigned exercise; and/or (3) helping or attempting to help another in an act of cheating or plagiarism. Plagiarism is presenting the words or ideas of another person as if they were your own. Examples of plagiarism are (1) submitting an assignment as if it were one’s own work when, in fact, it is at least partly the work of another; (2) submitting a work that has been purchased or otherwise obtained from an Internet source or another source; and (3) incorporating the words or ideas of an author into one’s paper without giving the author due credit.

Please read the complete policy at [http://www.sfasu.edu/policies/academic_integrity.asp](http://www.sfasu.edu/policies/academic_integrity.asp). All cases of academic dishonesty will be handled according to University policies and procedures (A-9.1). The consequences for academic dishonesty may range from a score of zero (0) on the assignment to an “F” for the course. For details, students should refer to the SFA Policy Manual (2011) or the University’s General Bulletin, 2012 – 2013 section entitled “Academic Integrity” and other sources of University policy.

WITHHELD GRADES

The following is taken from SFASU’s Policy Manual (2011), “Semester Grades Policy” (A-54). At the discretion of the instructor of record and with the approval of the academic chair/director, a grade of WH will be assigned only if the student cannot complete the course work because of unavoidable circumstances. Students must complete the work within one calendar year from the end of the semester in which they receive a WH, or the grade automatically becomes an F. If students register for the same course in future semesters, the WH will automatically become an F and will be counted as a repeated course for the purpose of computing the grade point average.
STUDENTS WITH DISABILITIES

To obtain disability related accommodations, alternate formats and/or auxiliary aids, students with disabilities must contact the Office of Disability Services (ODS), Human Services Building, and Room 325, 468-3004 / 468-1004 (TDD) as early as possible in the semester. Once verified, ODS will notify the course instructor and outline the accommodation and/or auxiliary aids to be provided. Failure to request services in a timely manner may delay your accommodations.

For additional information, go to http://www.sfasu.edu/disabilityservices/.

ACCEPTABLE STUDENT BEHAVIOR

Classroom behavior should not interfere with the instructor’s ability to conduct the class or the ability of other students to learn from the instructional program (see the Student Conduct Code, policy D-34.1). Unacceptable or disruptive behavior will not be tolerated. Students who disrupt the learning environment may be asked to leave class and may be subject to judicial, academic or other penalties. This prohibition applies to all instructional forums, including electronic, classroom, labs, discussion groups, field trips, etc. The instructor shall have full discretion over what behavior is appropriate/inappropriate in the classroom. Students who do not attend class regularly or who perform poorly on class projects/exams may be referred to the Early Alert Program. This program provides students with recommendations for resources or other assistance that is available to help SFA students succeed.
<table>
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<tr>
<th>SECTION</th>
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<th>READING ASSIGNMENTS &amp; EVALUATIONS</th>
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| SECTION 1 | WEEK 1 | - Introduction: What is Judicial Politics?  
- The Supreme Court in the Judicial System | Baum (1), Chapter 1, pp. 1-27 |
| | WEEK 2 | - Judicial Interpretative Philosophies | Scalia, All Quiz 1 |
| | WEEK 3 | - Introduction to Political Science Methodology | Readings: TBA Quiz 2 |
| | WEEK 4 | - Supreme Court Procedures  
- Law & Policy | Baum (1), Chapter 3, pp. 67-98  
Baum (2), Chapters 2 & 3 p. 23-88 Quiz 3 |
| | WEEK 5 | - Law & Policy Continued  
- The Impact of the Court | Baum (1), Chapter 5 p. 152-180  
Baum (1), Chapter 6, pp. 183-218 Quiz 4 |
| SECTION 2 | WEEK 6 | - Judicial Decision-Making  
- The Legal Model  
- The Attitudinal Model | Baum (1), Chapter 4, pp. 105-120  
Handout on Legal & Attitudinal Models Justice Paper Due |
| | WEEK 7 | - The Strategic Model | Baum (2), Chapter 4, pp. 89-125  
Epstein & Knight, Chapters 1-3, pp. 1-95 Quiz 5 |
| | WEEK 8 | - The Strategic Model Continued | Epstein & Knight, Chapters 4-6, pp. 112-184 Quiz 6 |
| | WEEK 9 | - Midterm Examination  
- Constitutive Model | Bailey & Maltzman, Chapters 1-3, pp. 1-47 MIDTERM EXAM |
| | | | Bailey & Maltzman, Chapters 4,5, & 8, pp. 64-95; pp. 140-183 Quiz 7 Case Paper Due |
| SECTION 3 | WEEK 10 | - Appointments & Vacancies | Epstein & Segal, Chapters 1-2, pp. 1-46  
Baum (1), Chapter 2, pp. 28-66 Quiz 8 |
| | WEEK 11 | - Nominations & Confirmations | Baum (1), Chapter 2, pp. 28-66  
Epstein & Segal, Chapters 3-4, pp. 47-118 Quiz 9 |
| | WEEK 12 | - The Politics of Judicial Appointments | Baum (1), Chapter 2, pp. 28-66  
Epstein & Segal, Chapters 5-6, pp. 119-148 Quiz 10 |
| SECTION 4 | WEEK 13 | - Writing the Analytical Paper | Readings, TBA |
| | WEEK 14 | - Presentations | Presentation Evaluation |
| | WEEK 15 | - Presentations | Presentation Evaluation Analytical Paper Due |
| FINAL EXAM | EXAM WEEK | - Comprehensive Examination | FINAL EXAM |

THIS IS A PRELIMINARY SCHEDULE ONLY. THE INSTRUCTOR RESERVES THE RIGHT TO MAKE CHANGES TO THIS SCHEDULE AS NEEDED.