

POLS 340: American Judicial Politics

Cal Poly, Dept. of Political Science
Winter 2019

Meeting place: Bldg 11 (Ag), Room 0104
Meeting times: M/W 8:10-10:00

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T/TH, 2:10-3:30
And by appointment

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Course Description

Traditionally, judges are thought of as neutral arbiters of the law. That is, we expect judges to read the law and apply the law accurately and neutrally. But, do they? Or – perhaps more importantly – can they? What does it mean to apply the law in a neutral manner? With or without their robes, judges are humans (not law robots), and humans can behave in complicated ways. Moreover, many judges are appointed for life and are thus removed from the typical institutions of democratic accountability. How can people hold judges responsible for the decisions they make? Or, *should* people be able to hold judges accountable for their decisions?

In this course, we will assess how judges make decisions and how (or if) judges are constrained by the executive branch, the legislative branch, and citizens. The second half of the course will address how judges may be shaped by their lived experiences and the role of the judiciary in shaping public policy. The final four classes will cover topics of the class's choosing. These topics might include courts and the criminal justice system, the role of the judiciary in non-democratic contexts, special interests and the courts, or compliance to judicial rulings, among other topics.

This course relies heavily on modern, empirical political science scholarship, so students will be introduced to the process through which political scientists generate and test specific hypotheses with the goal of understanding how our institutions shape political outcomes. Some of the assigned readings will challenge students to think in new (and maybe uncomfortable ways) about law, politics, and the role of institutions in forming our political realities. It's gonna be fun!

Course Goals and Learning Objectives

In this course, we will practice the following Political Science Department learning objectives:

- Department Learning Objective 1: To increase knowledge of the political science discipline.
- Department Learning Objective 2: To increase understanding of basic facts and concepts about the American political system.
- Department Learning Objective 5: To increase recognition of the major problems, the leading policies, and the legal issues confronting contemporary political systems.
- Department Learning Objective 6: To increase acquisition of citizenship skills.
- Department Learning Objective 7: To increase understanding of political science research and analytical skills.
- Department Learning Objective 8: To increase development of writing skills.

Grading

Your final grade is a weighted average of the assignments listed in the table below.

Assignment	Percent
Attendance	5%
Participation	5%
Daily Assignments/Quizzes	15%
Reflection/Discussion Assignment 1	20%
Reflection/Discussion Assignment 2	20%
Mid Term Exam (2/6)	17.5%
Final Exam (3/18-3/22)	17.5%

Course Grade Expectations

- **A (93.0-100%) Exceptional Performance** Consistently outstanding work on all course-related tasks at a level that distinguishes the student from other members of the class. A comprehensive and incisive command of the issues, literature, and substantive information relevant to the course. A frequently demonstrated exceptional capacity for original, creative, critical and logical thinking and ability to communicate those thoughts both verbally and in writing.
- **A- (90-92.99%) Excellent Performance** Consistently strong work on all course-related tasks. A comprehensive command of the issues, literature, and substantive information relevant to the course.
- **B+ (87-89.99%) Very Good Performance** Consistently acceptable work on all course-related tasks. A very good grasp of the issues, literature, and substantive information relevant to the course.
- **B (83-86.99%) Good Performance** Good and generally consistent work on all course-related tasks. A general understanding of the issues, literature, and substantive information relevant to the course.
- **B- (80-82.99%) Satisfactory Performance** Satisfactory work on course-related tasks. A reasonable understanding of the issues, literature, and substantive information relevant to the course.
- **C+ (77-79.99%) / C (73-76.99%) / C-(70-72.99%) Adequate Performance** Adequate performance on course-related tasks. An understanding of the basic elements of the issues, literature, and substantive information relevant to the course (C+). An inability to go beyond a recitation of basic factual material related to the class (C). Demonstrated weaknesses in the ability to discuss effectively course subject matter using both written and oral communication skills (C-).
- **D+ (67-69.99) /D(65.0-66.99%) Minimal Passing Performance** Barely acceptable work on course-related tasks. A generally superficial and often inconsistent familiarity with the issues, literature, and substantive information relevant to the course.
- **F (Below 65.0%) Unacceptable Performance** Fails to meet minimum course expectations. Fails to demonstrate competency with basic elements of the concepts in the course.

Demonstrates an inability to engage in coherent written or oral discussion of course material. Does not satisfy specific course expectations with respect to attendance, deadlines, participation, etc.

Attendance

Learning how to think critically – making acute observations, synthesizing knowledge across contexts, asking compelling questions, developing persuasive arguments, and communicating complex ideas – is best done by *doing*. Your presence in class provides several distraction-free (or distraction-reduced) hours a week for you to practice engaging in critical thought with your classmates (and with me!). So, come to class.

As an extra incentive, 5% of your final grade is allocated to attendance. Everyone gets two freebie absences. Things happen. Beyond two absences, only documented illness, family emergency, participation in official university-sponsored events or competitions, and religious holidays will be excused.

**Note, your attendance is functionally worth 25% of your grade because participation points and daily assignments/quizzes require your attendance.

In-class Assignments and Quizzes

In-class participation counts as 5% of your grade. These points will be earned by students who consistently demonstrate quality engagement both with the material and with their classmates during discussion.

In class assignments and quizzes (both announced or unannounced) comprise 15% of your total course grade. There will be either a (1) reading quiz, (2) group assignment, or (3) written response **each and every class**. These will be graded on completion or on quality at my discretion.

Reflection/Discussion Assignments

Each student will be assigned to **two** reflection/discussion days throughout the quarter, one before the midterm and one after. Each reflection/discussion assignment is worth 20% of the course grade (for a total of 40%). The reflection/discussion assignments have four parts.

1. (60 points) A two to three page response/reflection paper about the day's assigned reading. These papers should be double-spaced, 12pt font, with 1 inch margins. Three pages is short, but I still expect sophisticated engagement with the ideas. You must, therefore, practice *concise* writing. The content of the papers should address any of the following:
 - A shortcoming of the reading or some oversight,
 - How the topic does/does not or should/should not accurately apply to the Judiciary,
 - How the topic conforms to concepts discussed in other weeks or other courses,
 - How the topic contradicts concepts discussed in other weeks or other courses,
 - How the reading changed or reinforced something about your understanding of the judiciary.

Writing is HARD and requires a lot of practice. Importantly, writing *well* requires dedication to editing and re-writing drafts to polish your work. I expect you to take the opportunity to hone your writing skills in this course seriously. As such, I have high expectations for the quality of your writing. Papers will be graded on the following criteria:

- Demonstration of the mastery of concepts in the assigned readings,
 - Sophistication of the connections made between the readings and other ideas,
 - Quality of writing, including organization, syntax, and grammar.
2. (15 points) A brief (about one page) summary of an *application* of concepts covered in the reading. An application can be either a current event or a historical example. You should describe how concepts from the day's reading informs an understanding of the current or historical event.
 3. (15 points) Five discussion questions for the day's reading that are aimed at encouraging class discussion or debate on the readings.
 4. (10 points) In class discussion guidance. That is, the extent to which your discussion questions and your participation in class contributed to the quality of the class's discussion. Because you will have spent extra time working with the material for the day, it is appropriate (and expected) that discussion leaders will...
 - Pose prepared questions to jump start discussion,
 - Respond to classmate's questions about the material,
 - Fill in lulls in the discussion with follow up questions or extensions.

Exams

There will be two exams: a midterm and a final. Both exams will be open-note, timed exams proctored through Poly Learn. The exams will consist of different question types, including essay questions. The midterm exam will be available on **February 6th from 9am to 5pm**. You will have 2 hours to complete the midterm exam once you open it. The Final exam will be available on **March 18th at 9am until 5pm on March 22nd**. You will have three hours to complete the final exam once you open it. Each exam is worth 17.5% of your course grade.

While you are encouraged to use your notes, readings, and materials published online or elsewhere, **under no circumstances are you allowed to discuss the questions or potential answers with anyone else** until after the exam closes for everyone. Evidence of cheating – either copying text without citation or evidence of students discussing the exams with others – will result in an automatic 0 for the exam for all of those involved, including students who knew about any cheating and did not report it. Essay questions are broad enough that there is ample opportunity for partial credit (and I'll give partial credit for any attempt). So, while there is never any need to cheat, there is particularly no need to cheat in this course. I take cheating very seriously and will not tolerate it. **DON'T DO IT.**

Course Policies

Readings

There are no assigned textbooks for this course. All readings are available on the course's PolyLearn site. You are expected to read each day's reading **before** the start of each class. This is a discussion based course, and the success of the course depends in large part on your willingness to engage with complex ideas in the readings. Most of the assigned readings are journal articles or excerpts from academic books. The target audience for these pieces is other academics, which means many of these readings are "hard." But, you wouldn't be at Cal Poly if you weren't smart and capable. So, you can do it! Read them twice. Read them, and then text a classmate to talk about it. Read them with a Google tab open so you can look up terms. Make a study group. Use that brain!

Incomplete Grades

Sometimes classes need to take a backseat to other things going on in your life. Let me know as soon as possible if you will not be able to complete the course in the the time allotted this quarter. I will give incomplete grades, but only if there was an agreement **prior** to the end of the course.

Late Assignments

You will be penalized for late assignments or missed exams unless the absence/delay is due to documented illness, serious family emergency, participation in official university-sponsored events or competitions, or religious holidays. The penalty for unexcused late assignments is ten percentage points per day. For example, if the quality of your work earned you a 95 on an assignment but you turned the assignment in two days late, you would receive a 75 for the assignment. Extensions *may* be made on a case-by-case basis to accommodate unexpected difficulties. If something comes up that will affect your ability to be successful, let me know as soon as possible so I can work with you. (Note: having assignments due for other classes at the same time is not a sufficient reason for an extension)

Extra-Credit Work

Extra credit assignments will not be assigned. Do your work, participate, come to office hours. You'll do great without extra credit.

Communication

In addition to announcements made in class, I will communicate with you through email. You are expected to check email regularly (daily, M-F). Likewise, I will check my email regularly during the work week and respond as promptly as possible, Monday through Friday, 9:00am-5:00pm. While I try to respond to student inquiries promptly, I make no promises about the timeliness of email responses in the evenings and on weekends.

Integrity of Scholarship

I take the integrity of scholarship very seriously. By taking this course, you affirm that it is against course standards to cheat on exams, to plagiarize, to deviate from my instructions about collaboration on work submitted for grades, to give false information to a faculty member, and to undertake any other form of academic misconduct. You agree that I am entitled to move you to another

seat during quizzes without explanation. For more information about Cal Poly's expectations for academic integrity see <https://academicprograms.calpoly.edu/content/academicpolicies/Cheating>

The Department's Definition of Plagiarism "Plagiarism is defined as the act of using the ideas or work of another person or persons as if they were one's own without giving proper credit to the source. Such an act is not plagiarism if it is ascertained that the ideas were arrived through independent reasoning or logic or where the thought or idea is common knowledge. Acknowledgement of an original author or source must be made through appropriate references; i.e., quotation marks, footnotes, or commentary. Examples of plagiarism include, but are not limited to the following: the submission of a work, either in part or in whole completed by another; failure to give credit for ideas, statements, facts or conclusions which rightfully belong to another; failure to use quotation marks (or other means of setting apart, such as the use of indentation or a different font size) when quoting directly from another, whether it be a paragraph, a sentence, or even a part thereof; close and lengthy paraphrasing of another's writing without credit or originality; use of another's project or programs or part thereof without giving credit." <https://politicalscience.calpoly.edu/students/advising/policy>

The Department's Definition of Cheating "Cheating is defined as obtaining or attempting to obtain, or aiding another to obtain credit for work, or any improvement in evaluation of performance, by any dishonest or deceptive means. Cheating includes, but is not limited to: lying; copying from another's test or examination; discussion at any time of answers or questions on an examination or test, unless such discussion is specifically authorized by the instructor; taking or receiving copies of an exam without the permission of the instructor; using or displaying notes, "cheat sheets," or other information devices inappropriate to the prescribed test conditions; allowing someone other than the officially enrolled student to represent same." <https://politicalscience.calpoly.edu/students/advising/policy>

Access, Disability Services, and Resources

I am committed to providing appropriate accommodations. If you have a disability-related need please contact the Disability Resource Center at Cal Poly immediately: <http://drc.calpoly.edu/content/drc-services>, (805) 756-1395. If you need immediate accommodations or physical access, please let me know. You can email me, come to office hours, or schedule a one-on-one meeting. I want everyone to learn and will do what I can to facilitate that process.

Diversity and Inclusion

My goal is to create a learning environment that enables all students to succeed and know that their experiences are valid. I expect students to treat each other with kindness and civility. For more information on resources related to diversity and inclusion, please visit the Office of University Diversity & Inclusivity website at <http://diversity.calpoly.edu>. If you notice behaviors or institutions in our class that you feel undermine or obscure diversity and inclusion, please share those concerns with me (if you are comfortable doing so). If you are uncomfortable sharing concerns with me, please feel free to contact Dr. Elizabeth Lowham at elowham@calpoly.edu

Needs Support

If you face challenges securing food, housing, or other human needs know that you are not alone and Cal Poly can help. You can find resources available to support you through Cal Poly's Basic Needs Initiative at <https://www2.calstate.edu/impact-of-the-csu/student-success/basic-needs-initiative> and information about the Food Pantry and Meal Vouchers at <https://studentaffairs.calpoly.edu/hunger>

Class and Reading Schedule

Any changes to the schedule below will be announced in class as soon as possible and an updated syllabus will be emailed. Readings for each class date should be completed *prior* to the start of class.

The last four topics are the class's choice. The first week of the course the class will choose topics they want to study. Readings will be updated ASAP after the class votes on topics so students have ample time to prepare their Reflection/Discussion Leader Assignments.

Date	Topic	Readings	Reflection/ Leaders	Discussion
M 1/7	Intro	–	–	
W 1/9	Studying Judicial Politics	<u>Judicial Decision Making</u> , chapter 1	–	
M 1/14	Judicial Decision Making, Legal Model	Scalia “Constitutional Interpretation the Old Fashioned Way” AND Segal and Spaeth, <u>The Supreme Court and the Attitudinal Model Revisited</u> , chapter 2 The legal Model	1, 7, 13, 19, 25	
W 1/16	Judicial Decision Making, Attitudinal Model	Segal and Spaeth, <u>The Supreme Court and the Attitudinal Model Revisited</u> , chapter 3 The Attitudinal Model	2, 8, 14, 20, 26	
W 1/23	Judicial Decision Making, Strategic Model	Epstein and Knight, <u>The Choices Justices Make</u> , Chapter 1 and 6 (26 pages total)	3, 9, 15, 21, 27	
M 1/28	Presidential Constraint on the USSC	Moraski and Shipan (1999) “The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices.” <i>AJPS</i> . 43(4)	4, 10, 16, 22, 28	
W 1/30	Congressional Constraint on the USSC	Harvey and Friedman (2006), “Congressional Constraints on the Supreme Court’s Constitutional Rulings, 1987-2000.” <i>Legislative Studies Quarterly</i> . 31(4).	5, 11, 17, 23, 29	
M 2/4	Public Constraint on the USSC	Casillas, Enns, Wohlfarth. (2011). “How Public Opinion Constrains the Court.” <i>AJPS</i> . 55(1).	6, 12, 18, 24, 30	
W 2/6	Mid Term Exam	–	–	

Date	Topic	Readings	Reflection/ Leaders	Discussion
M 2/11	Identity and Judging	“A Latina Judge’s Voice,” Sotomayor; AND <u>Judicial Decision Making</u> , Chapter 3, Secion V.	1, 9, 17, 25	
W 2/13	Personal Relationships and Decision Making	Glynn and Sen (2015). “Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women’s Issues.” <i>AJPS</i>	2, 10, 18, 26	
T 2/19	USSC and the Rights Revolution	Epp, <u>The Rights Revolution</u> . Chapter 1-2 and 11 (35 pages total)	3, 11, 19, 27	
M 2/25	The Court and Social/Policy Impact	Rosenberg, <u>Hollow Hope</u> , Page xiii, chapters 1 and 14 and p 430-431 (42 pages total)	4, 12, 20, 28	
W 2/27	Courts and the Criminal Justice System	Brennan Center, “How Judicial Elections Impact Criminal Cases” Bein et al “How Consistently Are Death Penalty Appeals Decided?” Only Sections 1, 2, and 5.	5, 13, 21, 29	
M 3/4	The Judiciary as a (non?) Democratic Institution	Freeman (1991) “Constitutional Democracy and the Legitimacy of Judicial Review”	6, 14, 22, 30	
W 3/6	Courts in a Comparative Perspective	Ginsburg and Moustafa <i>Rule By Law</i> , Introduction and ch 13	7, 15, 23	
M 3/11	Futuristic Ideas A.I/V.R.	TBD	8, 16, 24	
W 3/13	Putting it all together	–	–	
M 3/18 to F 3/22	Final Exam			