The American Judicial System

Political Science 417 Fall 2017

Location Ingraham Hall 120
Time Mondays & Wednesdays 4:00–5:15 pm

Instructor Alexander Tahk
Email atahk@wisc.edu
Office 212 North Hall
Office Hours Thursdays, 2–4 pm

Teaching Assistant José Luis Enríquez
Email jlenriquez@wisc.edu
Office 121 North Hall
Office Hours Mondays and Wednesdays, 2:30–3:30 pm

Overview

This is a course on the functioning of the American judicial system. While courts and lawyers and central to our political system, our understanding of the legal system often comes from news reporting of unusual and important cases (e.g., landmark Supreme Court cases), sensational cases (e.g., the Zimmerman trial), and popular media (e.g., Law & Order, The Good Wife). What do courts and lawyers do in a typical case? How do judges reach their decisions? How do courts interact with each other and with other branches of government? Our study will include the structure and function of the American court system and its historical development, several approaches to understanding judicial decision-making, and the impact of court decisions.

This is not simply a course about formal or procedural parts of the legal system or about the law itself, although we will discuss both of those. Rather, we will also attempt to understand how outcomes are reached, what factors influence them, and how we might go about answering these sorts of questions.

Several different perspectives for understanding the courts and the judicial system. Lawyers and law professors are often concerned with what the law is or should be, viewing judges as more-or-less seeking outcomes of a case through legal reasoning. Political scientists, on the other hand, often view judges as actors attempting to advance their own interests or views over those of other political actors. We will look at questions from both perspectives.

Textbooks

The only required textbook is:


It is available from the University Bookstore.

All other readings will be posted on Learn@UW.

Three other useful—but not required—books are:


**Course format**

This course will primarily be a lecture class, but I encourage you to ask questions and participate. I do not take attendance in lecture, but **you are responsible for all material and information covered in lecture as well as in the readings**. Some material presented in lecture will not be in the readings.

Attendance at section is mandatory. Participation in section forms part of your grade. Students can volunteer to read and report on optional readings in section for bonus points.

**Course requirements and grading**

Two midterm exam (22.5% each), Final exam (40%), Section attendance and participation (15%).

**Wisconsin Supreme Court oral arguments**

Students will be required to attend oral arguments held by the Wisconsin Supreme Court in the state capitol at one point during the course.

**Midterm exam**

We will have two in-class midterm exams on October 16 and November 15. A review session for each will be held outside of class. They will consist of multiple choice, identification, and an essay.

**Final exam**

A final exam is scheduled for December 19 at 10:05am. The exam will be comprehensive but will have added focus on material from the final two weeks (that is, material from after the second midterm). A review session will be held during the final class or scheduled for another time if necessary. The final will consist of multiple choice, identification, and two essays.

**Disability accommodations**

Please inform me during the first two weeks of classes if you need any special accommodations in the curriculum, instruction, or assessments of this course to enable you to participate fully. Confidentiality of the shared information will be strictly maintained. Certain accommodations may require the assistance of the McBurney Disability Resource Center.

**Topics and readings**

Readings are broken down by week. All readings aside from those in the Baum textbook will be made available on Canvas.

Note that topics from one week may sometimes spill over into the beginning of the next week or may sometimes begin during the last part of the week before. Sometimes readings from one week are also
central to the lecture the following week. The quantity of reading is not always evenly distributed between weeks, so it may be helpful to do some readings in advance in order to space them out more evenly.

Finally, please note that the readings are subject to change. Please check Learn@UW for an up-to-date version of the syllabus. Should any changes be made, an email will be sent to the class mailing list.

**Week 1 and week 2 (Sept. 6, 11 & 13) – Introduction and common law**
Baum 1–18
Calvi & Coleman, “History and the Law”

**Week 3 (Sept. 18 & 20) – Law and court structure**
Baum 19–51
Calvi & Coleman, “Limitations”
Kerr, “How to Read a Legal Opinion”
Optional: *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938)

**Week 4 (Sept. 25 & 27) – Judicial selection**
Baum 92–121
Segal, Spaeth, & Benesh, “Staffing the Court”
Binder and Maltzman, “Advice and Consent During the Bush Years: The Politics of Confirming Federal Judges”
Holmes, “‘Going Nuclear’ over Appointments: The Causes and Consequences of Filibuster Reform”

**Week 5 (Oct. 2 & 4) – Criminal justice**
Baum 150–199
Calvi & Coleman, “Criminal law”
Casper, “‘Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender’”
*Martin v. State*, 17 So.2d 427 (1944)
*Gardner v. People*, 62 N.Y. 299 (1875)
*People v. Campbell*, 355 N.W.2d 27 (1983)

**Week 6 (Oct. 9 & 11) – Civil litigation**
Baum 201–243

**Week 7, part I (Oct. 16) – First midterm**
First midterm in class (Monday)

**Week 7, part II, and week 8, part I (Oct. 18 & 23) – Civil procedure**
Calvi & Coleman, “Civil procedure”
Baum 76 (“The Contingent Fee”)
Kritzer & Krishnan, “Lawyers Seeking Clients, Clients Seeking Lawyers: Sources of Contingency Fee Cases And Their Implications for Case Handling”
Week 8, part II, and week 9 (Oct. 25, Oct. 30 & Nov. 1) – Civil law
Calvi & Coleman, excerpts
Optional: Vosburg v. Putney, 80 Wis. 523 (1891)
   United States v. Carroll Towing Co., 159 F.2d 169 (1947)
   Raffles v. Wichelhaus, 2 H. & C. 906 (1864)
   Hawkins v. McGee, 84 N.H. 114 (1929)

Week 10 (Nov. 6 & 8) – Legal analysis and reasoning
Murphy, Pritchett, Epstein, & Knight, “Precedents and Legal Reasoning”
Carter, “Reason in Law”
Scalia, “Originalism: The Lesser Evil”
Sunstein, “Minimal Appeal”

Week 11, part I (Nov. 13) – Appellate courts
Baum 245–262
Hall, “Constituent Influence in State Supreme Courts”

Week 11, part II (Nov. 15) – Second midterm
Second midterm in class (Wednesday)

Week 12 and week 13, part I (Nov. 20, 22 & 27) – Supreme Court case selection
Baum 263–267
Segal, Spaeth, & Benesh, “Getting into Court”
Optional: Tanenhaus, Schick, Muraskin, and Rosen, “The Supreme Court’s Certiorari Jurisdiction: Cue Theory”

Week 13, part II, and week 14 (Nov. 29, Dec. 4 & Dec. 6) – Decision-making and opinions
Baum 268–281
Murphy, Pritchett, Epstein, & Knight, “The Process of Judicial Decision Making: The U.S. Supreme Court”
Posner, “Nine Theories of Judicial Behavior”

Week 15 (Dec. 9 & 11) – Policy and impact / The legal profession
Final review (in class if time permits)
Baum 288–321
Baum 54–92

Final exam (Dec. 19)
Final from 10:25am to 12:25pm