The American Judicial System

Political Science 417 Fall 2013

Location Social Sciences 6102
Time Monday & Wednesday 2:30–3:45pm

Instructor Alexander Tahk
Email atahk@wisc.edu
Office 305 North Hall
Office Phone (608) 263-2297
Office Hours Thursday 1–3pm

Teaching Assistant James Sieja
Email sieja@wisc.edu
Office 121 North Hall
Office Hours Monday 9:45–11:45am & Thursday 1–3pm

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, Damages). 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%), Short paper (5%), Section participation (10%).

**Wisconsin Supreme Court oral arguments and short paper**

Students will be required to attend oral arguments held by the Wisconsin Supreme Court in the state capitol at one point during the course. Students are to write a 1–2 page response outlining their experience, the issues of the case, and their opinion of the arguments presented.

This paper is due by **2pm nine days after attending** and should be submitted to the mailbox of your TA, James Sieja, in North Hall. Possible dates for attending oral arguments are: Oct. 15 (due Oct. 24), Oct. 22 (due Oct. 31), Oct. 23 (due Nov. 1), Nov. 11 (due Nov. 20), and Nov. 18 (due Nov. 27).

**Midterm exam**

We will have two in-class midterm exams on **October 16** and **November 18**. 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 21** 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 on December 11 or scheduled for another time if necessary. The final will consist of multiple choice, identification, and one to 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 Learn@UW.

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 (Sept. 4) – Introduction
No readings

Week 2 (Sept. 9 & 11) – Common law
Baum 1–18
Calvi & Coleman, “History and the Law”

Week 3 (Sept. 16 & 18) – 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. 23 & 25) – 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”

Week 5 (Sept. 30 & Oct. 2) – Civil litigation
Baum 201–243

Week 6 (Oct. 7 & 9) – 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 7, part I (Oct. 14) – Policy and impact
Baum 288–321

Week 7, part II (Oct. 16) – First midterm
First midterm in class (Wednesday)
Week 8 (Oct. 21 & 23) – Appellate courts
Baum 245–262
Hall, “Constituent Influence in State Supreme Courts”

Week 9 (Oct. 28 & 30) – 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 10 (Nov. 4 & 6) – Legal analysis and reasoning
Murphy, Pritchett, Epstein, & Knight, “Precedents and Legal Reasoning”
Carter, “Reason in Law”
Calvi & Coleman, “Constitutional Interpretation”
Scalia, “Originalism: The Lesser Evil”

Week 11 (Nov. 11 & 13) – Decision-making, opinions, and assignment
Baum 268–281
Murphy, Pritchett, Epstein, & Knight, “The Process of Judicial Decision Making: The U.S. Supreme Court”
Posner, “Nine Theories of Judicial Behavior”
Jessee and Tahk, “What Can We Learn About the Ideology of the Newest Supreme Court Justices?”

Week 12, part I (Nov. 18) – Second midterm
Last chance to see oral arguments
Second midterm in class (Monday)

Week 12, part II, and week 13 (Nov. 20, 25, & 27) – 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)

Thanksgiving recess

Week 14 (Dec. 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”
Optional: Robinson v. California, 370 U.S. 660 (1962)
Martin v. State, 17 So.2d 427 (1944)
Gardner v. People, 62 N.Y. 299 (1875)
People v. Campbell, 335 N.W.2d 27 (1983)
Week 15 (Dec. 9 & 11) – The legal profession
Final review (in class on Dec. 11 if time permits)
Baum 54–92

Final exam (Dec. 21)
Final from 10:05am to 12:05pm