

COURTS AND PUBLIC POLICY (*REVISED 10/15/03*)

POLITICAL SCIENCE 290AK_01

DICKINSON COLLEGE

FALL 2003-2004

MR. SWEET

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10:30 – 11:45 TUESDAYS AND THURSDAYS

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OFFICE HOURS: T 1:00 – 2:00 P.M., W 11:00 A.M.– 1:00 P.M. AND BY APPOINTMENT

COURSE DESCRIPTION

This is an upper level special-topics course exploring the powers and limitations of courts as creators of public policy. The primary focus of the course is on the American legal experience, using: affirmative action, school desegregation, pay equity, and prison reform as examples of the impact of the court decisions. Ultimately we will be addressing the question – why do courts matter?

To do so we first need to establish a framework for understanding how the Supreme Court operates. The course does not presuppose knowledge of the intricate workings of the American judicial system, but does depend upon properly locating the Supreme Court within a political system and as a political institution. If you have very little background in American politics, you may want to read O'Brien's *Storm Center* or McCloskey's *American Supreme Court* as useful background material. There will be lectures, especially in the early going of the course, covering these topics – but if you need additional assistance, please see me as soon as possible. Once we understand what the Court does, we can begin to assess theories evaluating how well the Court functions as a creator of public policy – both theoretically and within specific issues.

The course will require you not only to read the material before coming to class, but to reflect on the issues raised in the readings. In general, lectures and discussion will correspond to the assigned reading on the syllabus. You should, however, expect that (1) we will discuss some issues beyond the assigned readings, and (2) not discuss all of the assigned readings. On the examinations and writing assignments, you are responsible for all of the material covered in lecture and all of the assigned reading.

REQUIRED BOOKS

The required books, listed below, are available for purchase at the College Bookstore, and online readings are available linked to the web-version of the syllabus.

- Canon, Bradley C. and Charles A. Johnson. 1998. *Judicial Policies: Implementation and Impact*. 2nd ed. Washington, D.C.: CQ Press.
- Frickey, Philip P. and Daniel A. Farber. 1991. *Law and Public Choice: A Critical Introduction*
- Feeley, M. & Rubin, E. 1998. *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons*. Cambridge, UK: Cambridge University Press.
- Horowitz, Donald. 1977. *The Courts and Social Policy*. Brookings.
- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- Rosenberg, Gerald. 1991. *The Hollow Hope: Can Courts Bring about Social Change?* University of Chicago Press.

ACADEMIC INTEGRITY

A detailed listing of my policies is contained in the College's Student Code of Conduct and Disciplinary System.

GRADING

•Midterm Examination, Tuesday, October 28, 2003		= 30 %
•Short Papers (Assignments)	(3 * 10%)	= 30 %
•Participation		= 10 %
•Final Exam, Dec 2003		= 30 %

ASSIGNMENTS

There are three written assignments designed to familiarize you with the actors and institutions critical to understanding the impact of the Supreme Court. Papers are short (4-6 pages), but should still be considered formal. Do not let the brevity of assignment lull you into turning in a hastily written document.

1. The first written assignment should familiarize you with the formal path of a Supreme Court case, both on its way to the Court and the subsequent treatment of the case by the lower courts.
 - a. Select any U.S. Supreme Court case decided in the last ten years.
 - b. Shepardize the case (either online via Lexis-Nexis, or at the Law School)
 - i. If there are at least ten lower federal court (district or court of appeals) decisions citing the case (Shepard's calls this "following" or "distinguishing" Supreme Court precedent) move on to step (c). If not, select another case.
 - c. Read the case and identify the:
 - i. Parties, interveners and lower court opinions (dates and which courts)
 - ii. Dates of certiorari granted, oral argument held, and opinion issued by Supreme Court
 - iii. The legal issue(s) decided by the Court, and the Court's holding.
 - d. Shepardize the case (either online via Lexis-Nexis, or at the Law School)
 - i. Determine the number of types of treatments (*e.g.*, criticized, followed, etc.)
 - ii. Pick a few representative cases from among this list, and identify substantively the various approaches taken by the lower courts. Is there an explanation why the majority (or minority) of courts distinguished the precedent? Is there a split by Circuits? Over time? What patterns are there in the treatment of the case?
 - e. Your paper should include:
 - i. the information listed in (c) above (with part iii. meriting a paragraph or two)
 - ii. a table summarizing the treatments that Shepard's assigned to the various lower court rulings, and
 - iii. an explanation(s) for the lower court reactions (see d(ii) above).
2. The second assignment is to compare and contrast the various articles on public opinion (attitudes) to one another. In what ways have these authors swayed you that Court opinions matter, or do not matter? What are the areas of consensus and over what subjects do these authors disagree?
3. The third and final written assignment investigates impact of Court cases. Pick a Supreme Court case *not* covered this semester either directly in class, or as a case study in one of assigned readings, that required implementation and identify the actors and institutions who should have implemented the decision. Then conduct thorough searches of relevant newspapers, magazines, books, and journal articles to determine the extent to which the actors and institutions implemented or responded to the Court's decision. We will discuss a proper method for selecting a case in class. Your analysis should briefly detail the case, the results of the implementation, and an explanation of *why* the actors and institutions reacted the way that they did.

Day	Date	Subject	Readings
T.	Sept. 2	Law v. Policy	Introduction
R	4		Federalist Papers 78-83 Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy Maker." <i>Journal of Public Law</i> 6: 279 Casper Casper, Jonathan D. 1976. "The Supreme Court and National Policy-Making." <i>American Political Science Review</i> 70:50
T	9		Frickey and Farber, <i>Law and Public Choice</i> , Chapters 1&2, pp. 1-62
R	11		Frickey and Farber, <i>Law and Public Choice</i> , Chapter 5 and Epilogue, pp. 116-153
T	16		Horowitz, Donald, <i>The Courts and Social Policy</i> , Chapters 1&2, pp. 1-67
R	18		Horowitz, Donald, <i>The Courts and Social Policy</i> , Chapters 3 and 7, pp. 68-105; 255-298
T.	23	Impact Theory	<p style="text-align: center;">***First short paper due***</p> <p>Brown v. Board of Education</p>
R	25		Rosenberg, <i>The Hollow Hope</i> , Introduction, Chapters 1-2, pp. 1-71
T	30		Rosenberg, <i>The Hollow Hope</i> , Chapters 3-4
R	Oct. 2		Rosenberg, <i>The Hollow Hope</i> , Chapters 5 and 12
T	7		<p>County of Washington v. Gunther</p> <p>McCann, <i>Rights at Work</i>, Chapters 1</p>
R	9		McCann, <i>Rights at Work</i> , Chapters 2-3
T.	14		MIDTERM PAUSE – no class
R	16		McCann, <i>Rights at Work</i> , Chapters 4-5
T	21		McCann, <i>Rights at Work</i> , Chapters 8, pp. 278-310
			Canon and Johnson, <i>Judicial Policies: Implementation and Impact</i> , Chapter 1
R	23		Canon and Johnson, <i>Judicial Policies: Implementation and Impact</i> , Chapters 6-7

T	28	<i>Midterm Examination</i>	
R	30 Attitudes	Flemming, Bohte, and Wood, One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947-1992, 41 AJPS 1224 (1997).	
T	Nov. 4	Franklin and Kosaki, The Republican Schoolmaster: The Supreme Court, Public Opinion, and Abortion. 83 APSR751 (1989).	
R	6	Johnson and Martin. "The Public's Conditional Response to Supreme Court Decisions." 92 APSR299 (1998). Calderia, Gregory A. 1987. "Public Opinion and the Supreme Court: FDR's Court-Packing Plan." American Political Science Review 81: 1139.	
T.	11 Criminal Procedure*	***Second Short Paper due*** Mapp v. Ohio, 367 U.S. 643 (1961) Horowitz, Chapter 6, pp. 220-254	
R	13	Orfield, Myron W., Jr. 1987. "The Exclusionary Rule and Deterrence: An Empirical Study of Chicago." University of Chicago Law Review 54: 1016 Perrin, L. Timothy et al. 1998. "If It's Broken, Fix It: Moving Beyond the Exclusionary Rule." 83 Iowa Law Review 669 (1998)	
T	18 Abortion*	Roe v. Wade Rosenberg, <i>Hollow Hope</i> , 173-227	
R	20	Rosenberg, <i>Hollow Hope</i> , 228-265	
T	25	Meier, Kenneth, et al. 1996. "The Impact of State-Level Restrictions on Abortion." Demography 33: 307. Hansen, Susan. 1980. "State Implementation of Supreme Court Decisions: Abortion Since Roe v. Wade." Journal of Politics 42:372.	
R	27	<i>Thanksgiving – no class</i>	
T	2 Institutions and Other Considerations	***Third Short Paper due*** Charles Epp, The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective, chapters 3 and 4, pp.26-70.	
R	4	McNollgast, Politics and the Court: A Positive Theory of Judicial Doctrine and The Rule of Law Sweet, Supreme Policymaking (Chapter 1)	

T	9	Eskridge, William N. Jr. 1991. "Overriding Supreme Court Statutory Interpretation Decisions." Yale Law Journal 101: 331 Meernik, James and Joseph Ignagni. 1997. Judicial Review and Coordinate Construction of the Constitution." American Journal of Political Science 41: 447.
R	11	Grutter v. Bollinger (2003) Gratz v. Bollinger (2003)
W	17	Final Examination, 2:00 P.M.

*Alternate Reading: Feeley, M. & Rubin, E., *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons*.

If you have a substantive interest in prisons, please see me to make alternate arrangements for reading and writing assignments.