In this course, we consider courts as political institutions. Our central question is whether or in what sense legal decision making is "political" that is, whether or in what sense what goes on in the courtroom is anything other than judges making policy according to their own policy preferences. We'll take a close look at how judges makes decisions (and how lawyers make arguments) and at the logical, social and institutional factors that constrain their discretion. We'll also consider whether or how courts can be used to effect significant political change.

Course requirements: There will be no exams. Your grade will be computed as follows:

Paper One = 35%

Paper Two = 35%

*You may rewrite these papers as often as you like, for a new grade

Assignments (6) = 15% (averaged)

Class participation = 15%

***All assignments must be turned in on the day they are due. No late papers, please!

***Readings should be completed prior to class

Texts: Frank Murphy, Courts, Judges and Politics, 5th ed.
Rosenberg, The Hollow Hope

***additional readings on reserve [R]***

Course Outline

Class 1: Introduction: Law vs. Politics?

Class 2: Structure of the Judicial System and the Role of Courts

Murphy, Ch. 3, pp. 79-93

Murphy, Ch. 2, intro, 2.1

Class 3: Law vs. Democracy?

Murphy, Ch. 2.2, 2.3, 2.4, 2.5

Class 4: Judicial independence

*In class: judicial independence exercise

Class 5: Jurisprudence

Murphy Ch. 1: intro, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6

- Assignment #1 due: Judicial independence exercise

Class 6: Reasoning from Cases

Murphy, Ch. 10: intro, 10.2


Class 7: Cont.

Murphy, Ch. 10: 10.1, 10.3, 10.5

Class 8: Cont.

Murphy, Ch. 10: 10.6, 10.7, 10.8, 10.9

Class 9: Reasoning from Statutes

Murphy, Ch. 11: intro, 11.1, 11.2, 11.3, 11.5, 11.6, 11.7, 11.9

Class 10: Public Choice and Statutory Interpretation

Murphy, Ch. 11: 11.4

Macey, Promoting Public-Regarding Legislation Through Statutory Interpretation, 86 Colum. L. Rev. 223 (1986) [R]

Class 11: TVA v. Hill

TVA v Hill, 437 US 153 (1978) [find on lexis]

- Assignment #2 due: TVA scenario, 2-3 pp.

Class 12: Constitutional Interpretation

Murphy, Ch. 2: 2.2, 2.3 [revisited]

Murphy, Ch. 12: intro, 12.1, 12.8, 12.9

Class 13: Cont.

Murphy, Ch. 12: 12.2-12.7

Class 14: Legal Reasoning and the Legal Community: Interpretation as a Chain Enterprise

Murphy, 11.8

Fish, Working on the Chain Gang, 60 Tex. L. Rev 527 (1982) [R]

*In class: chain novel exercise
Class 15: Bush v Gore

Sunstein, 68 U. Chi. L.Rev. 737 (Summer 2001) [Lexis]

Dershowitz, Bush v Gore: Supreme Injustice, Ch. 3 [R]

*Paper One due

Class 16: Explaining Judicial Behavior: Theoretical Approaches

Spaeth, "The Attitudinal Model," in Epstein, Contemplating Courts [R]

Gillman & Clayton, Supreme Court Decision-Making, Intro (pp. 1-5) [R]

Bussiere, "The Supreme Court and the Development of the Welfare State," in Gillman & Clayton [R]

Class 17: Explaining Judicial Behavior: Court Politics

Murphy, Ch. 13: intro, 13.3, 13.8, 13.9

Murphy, Ch. 8: 8.2, 8.3

Class 18: Explaining Judicial Behavior cont.

Bob Jones University v United States, 461 US 574 (1983) [find it on lexis]

*In class: Bob Jones on trial

• Assignment #3 due: Brief the Bob Jones Case, 3-4 pp.

Class 19: Appointment

Murphy, Ch. 4: intro, 4.1, 4.2, 4.4-4.9

*In class: appointment exercise

Class 20: Confirmation

Carter, The Confirmation Mess, pp, 159-178, 187- 206 [R]

CQ, Clinton Closes in on a Nominee [handout]


Class 21: Implementation

Murphy, Ch. 7: intro, 7.3

Fletcher, "The Discretionary Constitution," Yale L. J. 91: 635-663 [R]

• Assignment #4 due: Fletcher and White confirmations, 3-4 pp.

Class 22: Cont.

Murphy, Ch. 8: intro, 8.1, 8.4 8.12
*Final rewrites of paper 1 due*

Class 23: Using the Courts to Achieve Policy Change

Murphy, Ch. 14: intro, 14.1, 14.2, 14.4, 14.7

Rosenberg, *The Hollow Hope*, pp. 1-36

Class 24: Cont.

Rosenberg, pp. 39-106

Murphy, Ch. 14: 14.6

**Paper 2 due**

Class 25: Cont.

Murphy, 6.4

McCann, *Taking Reform Seriously* (pp. 106-121) [R]

- Assignment #5 due: McCann vs Galanter, 2-3 pp.

Class 26: Lawyers and Politics: American Aristocracy or Agents of Social Justice?

Murphy, Ch. 5: intro, 5.3-5.5

Tocqueville, pp. 263-70 [handout]

Class 27: So You Want To Go To Law School?

Murphy, 5.1

Ehrlich & Hazard, Goals of Legal Education [handout]

Erlanger & Lessard, Mobilizing Law Schools in Response to Poverty [R]

Class 28: Law School, Legal Culture and Affirmative Action

Texas v. Hopwood, 78 F3d 932 (1996) [find on lexis]

Cardozo, Racial Discrimination in Legal Education [R]

Woo, Reaffirming Merit in Affirmative Action [R]

*In class: Debate affirmative action in law school admissions

- Assignment #6 due: Affirmative action in law school admissions

**Final rewrites of paper #2 due Friday, Nov. 16, at noon**