This course provides an introduction to the study of law and courts as political institutions and judges as political actors. Topics include judicial behavior and policymaking, the politics of Supreme Court nominations, the role of public opinion in shaping judicial doctrine, and the impact of courts on society. Because this is an American Pluralism course, a major objective is to increase knowledge of how reform groups have used the courts to combat discrimination based on race, sex, and sexual orientation.

### Course Assignments:

- Participation: 20%
- Paper: 20%
- Oral Presentation: 10%
- Final Exam: 50%

### Required Texts


### I. Introduction: Courts of Law or Justice?

*Reform groups routinely turn to courts to address public policy problems, shaping policy on the subject of race, ethnicity, class, religion, gender, or sexual orientation. However, there has been much debate over the appropriateness of judges assuming this role. Empirically, it is also unclear whether judges are effective policymakers. We begin the course by engaging these debates.*

**T (30)**  Introduction

**W (31) The Supreme Court as a National Policymaker: Blackboard (Hume, Chapter 1)**

Special Assignment: Find a recent newspaper article describing a circumstance in which a *court* played an active role in shaping American public policy in the area of race, ethnicity, class, religion, gender, or sexual orientation. Be prepared to discuss it in class.

**R (1)**  Deciding Cases and Writing Opinions: Blackboard (O’Brien, Chapter 5)
II. Theories of Judicial Behavior:

The conventional wisdom is that judges decide cases based exclusively on legal considerations, i.e., on an objective application of legal principles to the facts of disputes. However, there is considerable evidence that judicial behavior is influenced by the ideology of judges, their personal background characteristics, and their other experiences. This unit of the course explores the evidence for different models of judicial behavior and discusses their normative implications.

M (5) **The Attitudinal Model**: Blackboard (Hume, Chapter 2; Segal & Spaeth: pp. 86-97; 312-326; 357-381)

T (6) **Social Background Theory** – Blackboard (Tate, “Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices”; Davis, Haire, and Songer, “Voting Behavior and Gender on the U.S. Courts of Appeals”; Kastellec, “Racial Diversity and Judicial Influence on Appellate Courts”)

W (7) **The Legal Model**: Blackboard (Hume, Chapter 3)

R (8) **The Strategic Model**: Blackboard (Hume, Chapter 4)

III. Courts and the American Public

To what extent are courts responsive to public opinion? In many states, the people elect judges, but research suggests that even appointed judges might be responsive to changes in public opinion. This research is divided, however, over whether appointed judges respond directly to shifts in the public mood or they respond indirectly through the appointment process. Still other research suggests that the influence of the public on judging is not uniform—the “haves” possess certain structural advantages in the American legal system that ensure that their interests are more likely to be reflected in the development of law and policy. We examine evidence about the relationship between courts and the American public and discuss whether the effective assistance of counsel has the potential to improve conditions for “have nots.”

M (12) **Introduction** – Rosentiel, *Shining City: A Novel*

T (13) **The Indirect Influence of Public Opinion** – Blackboard (Hume, Chapter 5)

W (14) **The Direct Influence of Public Opinion** – Blackboard (Hume, Chapter 6)

R (15) **Litigants & Lawyers** – Blackboard (Galanter, “Why the ‘Haves’ Come Out Ahead”; McGuire, “Repeat Players in the Supreme Court”)

IV. The Impact of Courts

Can courts be effective agents of social change? Reform groups frequently turned to courts to protect minority rights, but skeptics doubt that courts can produce change without support from other branches—and the public. We will study the impact of courts by looking at how judges have influenced policy in several highly salient issue areas, devoting particular attention to how the institutional design of courts influences the potential for judges to act as reform agents.

M (19) Introduction – Alexander, *The New Jim Crow*

T (20) Theories of Judicial Impact – Blackboard (Hume, Chapter 7); Rosenberg, pp. 1-36

W (21) The Impact of Brown – Rosenberg, pp. 39-71; 107-156

The Impact of Roe – Rosenberg pp. 173-201; 228-246

R (22) The Backlash Thesis – Blackboard (Klarman, “The Backlash Thesis“)

V. End of Term Assignments

M (26) Presentations, Day 1

T (27) Presentations, Day 2

W (28) Final Exam Preparation

R (29) Final Exam
Assignments:

**Paper (due 6/26).** Choose a Supreme Court case from the past 5 years (assignments made in class on 6/8). In a 5-7 page essay, explain which of the leading theories of judicial behavior is the most helpful to you in explaining the outcome of this case and why. When defending your choice, you should discuss the strengths and weaknesses of each of the leading theories of judicial behavior. You should also make reference to at least five journal articles, as well as cite data from the Supreme Court database ([http://supremecourtdatabase.org/analysis.php](http://supremecourtdatabase.org/analysis.php)) and/or the Scotusblog statpack ([http://www.scotusblog.com/reference/stat-pack/](http://www.scotusblog.com/reference/stat-pack/)).

**Presentation.** Oral presentations will occur in class on 6/27 (M) and 6/28 (T), with half of the class presenting in each session. Each student will present the results of the findings from their paper, assembling a PowerPoint presentation that includes the following: (a) a brief overview of the case; (b) why the case is important from a public policy standpoint; (c) which theory of judicial behavior best explains the outcome; (d) to what extent are the evidence/data consistent with your hypothesis; (e) to what extent are the evidence/data inconsistent with your hypothesis; (f) other alternatives/explanations. All presentations must use data from the Supreme Court database ([http://supremecourtdatabase.org/analysis.php](http://supremecourtdatabase.org/analysis.php)) or the Scotusblog statpack ([http://www.scotusblog.com/reference/stat-pack/](http://www.scotusblog.com/reference/stat-pack/)).