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PSC 370.01: Courts and Judicial Politics

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Political Science 370
Spring 2010

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Text: Walter F. Murphy, C. Herman Pritchett, and Lee Epstein Court, Judges, and Politics, 6th ed., 2006

Course Overview

The purpose of this course is to provide an introduction to the workings of the judicial branch of government and to explore the role of the federal judiciary in the American political system. Students will be expected to read approximately 15 pages in the text for each class meeting. The class format will be lecture and discussion, with the instructor acting as discussion leader. The learning goals are student understanding of the judiciary's procedural and structural features, accurate analysis of assigned articles and cases, and effective oral and written expression.

Term Paper (ONLY for students enrolled in PSCI 300 or PSCI 400; see suggested topics below)

The optional term paper will be no more than twelve double-spaced pages of text, not counting the bibliography. Suggestions for term paper topics are attached; the instructor must approve each student's selection. The introductory section of the paper, a topical outline of the paper, and a list of sources to be used are due on March 2. The introductory section should include the paper's topic, an overview of the paper's contents, and a discussion of the topic's importance. The instructor will correct these materials and return them for revision and inclusion in the final paper, which is due on April 22. Citation to sources used can be included in parenthetical text notes tied to the bibliography (see the instructor about this format), or footnotes and a bibliography or end notes and a bibliography (see *The Chicago Manual of Style*). Grading criteria will be accuracy of content, coherence of argument, and correctness of writing.

Examination

There will be two examinations. The final examination will cover course material from the first examination to the end of the semester. Each examination will use definition and short-essay questions. The midterm examination will be held on March 4. The final examination is scheduled for May 10 at 8:00 a.m.

Grading

Each of the two examinations can earn a maximum of 50 points. The instructor, at his discretion, can award up to 10 extra-credit points for excellence in class recitation. The course grades will be determined as follows: A = 94-100; A- = 90-93; B+ = 87-89; B = 83-86; B- = 80-82; C+ = 77-79; C = 73-76; C- = 70-72; D+ = 67-69; D = 63-66; D- = 60-62; F = 59 and lower. For the credit/no-credit grading option, a grade of D- and above will count as "credit."

SUGGESTIONS FOR PSC 300 and PSC 400 TERM PAPERS

1. Plea bargaining – give roles of various actors, arguments for and against, and examples
2. Alternate dispute resolution – give history, examples or a case study, and critique of ADR
3. Sentencing – focus on legislative control and judicial discretion; use U.S. Sentencing Commission; Mistretta v. U.S. (488 U.S. 361) and U.S. v. Booker (543 U.S. 220)
4. Juvenile justice system – give its evolution, jurisdiction, functions, procedures, case load, criticisms, and reform alternatives
5. Judicial review – focus on its justification in a representative democracy and criticisms; summarize, compare, and critique two of the following: Robert H. Bork, The Tempting of America; Jesse H. Choper, Judicial Review and the National Political Process; John Hart Ely, Democracy and Distrust; Alexander M. Bickel, The Least Dangerous Branch; David M. O'Brien, Storm Center; Lawrence H. Tribe, God Save This Honorable Court
6. Judicial contempt power – explain civil contempt and criminal contempt and give a comparison of the two
7. Judicial selection - compare the elective system and the appointive system with emphasis on the judiciary article in the 1972 Montana Constitution and the debate in the Montana Constitutional Convention
8. Decisionmaking on the U.S. Supreme Court – summarize, compare, and critique two of the following: Walter Murphy, Elements of Judicial Strategy; Bob Woodward, The Brethren; David O'Brien, Storm Center; Edward Lazarus, Closed Chambers; Phillip Cooper, Battles on the Bench
9. Office of Montana Attorney General – focus on the office's organization, duties, workload, budget, governmental relationships, staffing, achievements, problems, the incumbent
10. Office of Missoula City Attorney - same sub-topics as for #9
11. Office of Missoula County Attorney - same sub-topics as for #9
12. Public defender – regarding either the state or federal public defender in Missoula, focus on funding, duties, pay, staffing, workload, examples of cases, record in court, alternatives, contemporary criticisms
13. ASUM Legal Services - same sub-topics as for #12
14. Legal education – focus on its historical phases, recent innovations, and approach of the Montana Law School
15. Montana Judicial Standards Commission – focus on its authorization in law, organization, purpose, duties, principles of judicial ethics, discipline of Montana judges

16. Montana Commission on Practice – focus on its authorization in law, organization, purpose, duties, principles of lawyer ethics, discipline of Montana lawyers
17. Television and trials – explain the philosophy of open procedures and its conflict with judicial efficiency and effectiveness; give the lessons from the O.J. Simpson case
18. Justice of the peace court – focus on its authorization in law, tradition, jurisdiction, functions, procedures, case load, decision making, appeal, administration, staffing, budget, criticisms, reform alternatives, observation of a proceeding
19. Montana district court - same as for #18
20. U.S. district court - same as for #18
21. Montana Supreme Court - same as for #18
22. Law firm - compare two law firms from the perspectives of staff resources, lawyers' backgrounds, clients, organization, specializations, administration, research and technology resources, representative cases, pro bono work
23. Jury – cover its tradition and philosophy, jury's role vs. judge's role, selection procedure and use of social scientists, behavior of members, size and unanimity requirements, jury nullification, special or blue ribbon juries, reform proposals
24. Grand jury – cover its purpose and tradition, roles, procedures, alternatives, use by Kenneth Starr in Clinton scandal or by Patrick Fitzgerald in the Scooter Libby case, reform proposals
25. Representational litigation – explain how groups are represented by amicus curiae briefs, class action suits, test cases; give a case study of one litigating group, such as ACLU, NAACP, Sierra Club, Rocky Mountain Legal Foundation
26. Judicial biography – focus on one justice's pre-court life, service on the Supreme Court, and the connection between his/her background and decisions on the Court
 - a. William H. Rehnquist
 - b. Thurgood Marshall
 - c. Warren E. Burger
 - d. William J. Brennan
 - e. John Marshall Harlan
 - f. William O. Douglas
 - g. Earl Warren
 - h. Felix Frankfurter
 - i. Hugo Black
 - j. Benjamin Cardozo
 - k. Oliver Wendell Holmes
 - l. Sandra Day O'Connor
 - m. David Souter
 - n. Harry Blackmun
 - o. Louis Brandeis
 - p. John Marshall
 - q. Roger B. Taney
 - r. Clarence Thomas
 - s. John Paul Stevens
 - t. Ruth Bader Ginsburg
 - u. John Roberts
 - v. Samuel Alito
27. Indian courts – focus first on tribal courts in general and then on one tribal government court; cover their purpose, organization, authorization, successes, staffing, jurisdiction, problems, reform proposals

28. Office of U.S. Solicitor General – explain the office’s history, duties, official relationships, contribution to U.S. Supreme Court, and careers of some incumbents
29. Law clerk – cover this position’s purpose, duties, and influence, especially on the U.S. Supreme Court; (use W.O. Douglas, The Court Years; D. O'Brien, Storm Center; Tinsley E. Yarbrough, The Rehnquist Court and the Constitution; John Oakley, Law Clerks and the Judicial Process)
30. Advertising by lawyers – regarding this practice, give its history, 1st amendment issues, kinds of advertising, ethical issues, effectiveness, and regulations by the bar
31. U.S. Tax Court – give its purpose and duties, organization and procedures, and a critique
32. Child custody proceeding – give its history, a description of procedures used today, a critique, and reform suggestions
33. Jurisprudence - analyze one of the major schools (e.g., original intent – Antonin Scalia and Robert Bork; adaptive – Stephen Breyer and William Brennan; law and economics – Richard Posner; sociological – Roscoe Pound and Benjamin Cardozo; feminist – Andrea Dworkin and Catherine MacKinnon; realism – Jerome Frank)
34. Court martial – give the history and principal features of military courts and their relationship to the federal judicial system
35. Military tribunals – analyze the Guantanamo Bay controversy by focusing on history, alternatives, and Supreme Court cases
36. Selection of U.S. Supreme Court Justices - comment on the process by doing a case study of Robert Bork, Clarence Thomas, John Roberts, Samuel Alito, or Sonia Sotomayor
37. U.S. Independent Counsel – cover the reasons for the office, constitutionality upheld (Morrison v. Olson, 487 U.S. 654), criticisms of office, reform options, 1999 Congressional debate, termination of office
38. History of the U.S. Supreme Court - analyze one era relying in part on such books as Herman Schwartz, The Burger Years; Bernard Schwartz, The Unpublished Opinions of the Warren Court; E. Vincent Blasi, The Burger Court; C. Herman Pritchett, The Roosevelt Court; Tinsley E. Yarbrough, The Rehnquist Court and the Constitution; Mark Tushnet, The Warren Court; William Leuchtenburg, The Supreme Court Reborn... in the Age of Roosevelt
39. Judicial interpretation – give an overview, comparison, and critique of Antonin Scalia, A Matter of Interpretation (1977) and Stephen Breyer, Active Liberty (2005)
40. Campaigning by judges – give a thorough analysis of Republican Party of Minnesota v. White, 536 U.S. 765
41. Judicial recusal – give a thorough analysis of Caperton v. A.T. Massey Coal Co. (2009)