

POLITICAL SCIENCE 150  
**JUDICIAL POLITICS AND CONSTITUTIONAL INTERPRETATION**

Course Instructor: Jeremy Fortier  
Office Hours: M 1 – 3pm, and by appointment  
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Course Quarter: Spring 2016  
Course Time: TR 12:10 – 1:30pm  
Course Location: 212 Veihmeyer Hall

	Teaching Assistants:	
Isaac Hale	Office Hours: M 12:30-2:30, 666 Kerr Hall	E-Mail: idhale@ucdavis.edu
Keith Hodson	Office Hours: MW 10-11:00, 666 Kerr Hall	E-Mail: khodson@ucdavis.edu

**Course Description**

This course provides an introduction to judicial politics and constitutional interpretation.

In the first section of the course we will look at political science literature addressing the following questions: the political logic leading to the rise of judicial power; the function that constitutions and courts perform in modern political systems; how judges make decisions; the extent to which judicial independence ever truly exists; the implications of all this for the effectiveness of courts as a tool of social and political change.

In the second section of the course we will apply the arguments from the first section to an analysis of the American constitutional order. We will focus on competing theories of constitutional interpretation, and examine the evolution of the Court's jurisprudence (focusing on issues surrounding the right to privacy and due process). The goal of this section of the course is to get a clear sense of what the Court has said about the Constitution's meaning, to critically assess what the Court has argued, and to identify and assess the underlying social, moral, and political theories that inform the opinions of the Court.

**Course Materials**

All course materials are available on SmartSite, except for the following book, which is available for purchase through the university bookstore:

- Fukuyama, Francis. *The Origins of Political Order*. ISBN: 978-0374533229.

**Course Evaluation**

Assignments for the course are as follows:

- A short paper (1200-1500 words), worth 15% of the final course grade, due in-class on April 21<sup>st</sup>.
- A mid-term exam worth 30% of the final course grade, held in-class on May 3<sup>rd</sup>.
- A short paper (1200-1500 words), worth 20% of the final course grade, due in-class on May 19<sup>th</sup>.
- A take-home final exam worth 35% of the final course grade, due at the time and place of the official scheduled take-home exam (Saturday June 4<sup>th</sup>, 8-10am, 212 Veihmeyer Hall).

**Course Policies**

*Make-up Exams:* Make-up exams will only be permitted in cases of thoroughly documented medical emergencies. *Re-grading:* Any student who wishes to contest the grade on an individual assignment must do so within one week of the grade having been issued. You must provide a written explanation of why your paper should be reevaluated. In re-grading, the entire assignment will be evaluated (not just a specific part), and your grade can either go up or down. *Incompletes:* No incompletes will be given for this course.

## Course Schedule

*NOTE:* The schedule below is *approximate*. Modifications to the schedule will be announced in-class or via SmartSite. Students are responsible for keeping themselves informed of such changes.

March 29 (T): Introduction

March 31 (R): The Development of Law and Courts: China, India, Islam

Francis Fukuyama, *The Origins of Political Order*, pp. 97-127 (esp. 116-122),  
150-174 (esp. 160-161, 173), 189-210 (esp. 196-201), 215-228 (esp. 220-223)

April 5 (T): The Development of Law and Courts: Western Europe

Francis Fukuyama, *The Origins of Political Order*, pp. 245-289 (esp. 245-246, 261-267)

April 7 (R): The Creation of Judicial Power

Alec Stone Sweet, "Judicialization and the Construction of Governance"

April 12 (T): The Prototype of Courts and their Relation to the State

Martin Shapiro, *Courts: A Comparative and Political Analysis*, pp. 1-37

April 14 (R): The Behavior of Judges (I): Judges as Revealers of Objective Legal and Moral Truths

Ronald Dworkin, *Law's Empire*, pp. 225-250, 254-266, 379-392.

April 19 (T): The Behavior of Judges (II): Judges as Instruments of Majority Preferences

Robert Dahl, "Decision Making in a Democracy"

April 21 (R): The Behavior of Judges (III): Judges as Partisan Advocates

Segal & Spaeth, *The Supreme Court and the Attitudinal Model Revisited*,  
pp. 292-299, 312-325

April 26 (T): The Behavior of Judges (IV): Judges as Strategic Decision-Makers

Epstein & Knight, *The Choices Justices Make*, pp. 1-21

April 28 (R): Continuation and Review

May 3 (T): **MID – TERM EXAM**

May 5 (R): An Introduction to Constitutional Interpretation

Sanford Levinson, "On Interpretation"

May 10 (T): Constitutional Interpretation: Liberal and Conservative Philosophies

Ronald Dworkin, "The Jurisprudence of Richard Nixon"

William Rehnquist, "The Notion of a Living Constitution"

May 12 (R): A Classic Case of Constitutional Interpretation (I): Finding the Right to Privacy

*Griswold v Connecticut*, opinions by Douglas and Goldberg

May 17 (T): A Classic Case of Constitutional Interpretation (II): Finding the Right to Privacy

*Griswold v Connecticut*, opinions by Harlan, White, Black, and Stewart

May 19 (R): Extending the Right to Privacy (I)

*Roe v Wade*; *Planned Parenthood v Casey*; *Lawrence v Texas*

May 24 (T): Extending the Right to Privacy (II)

*Obergefell v Hodges*

May 26 (R): Reflecting on Rights and the Constitution

Gary J. Jacobsohn, "Rights and American Constitutional Identity"

May 31 (T): Continuation and Review

June 2 (R): Work on take-home final exam