

THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA
POLITICAL SCIENCE 2210, SECTION 0, CRN 43091
INTRODUCTION TO JUDICIAL PROCESS, FALL 2014

Instructor: Russell Fowler, J.D.

Appointment: Current

Office: 535 Chestnut, Suite 360, Chattanooga, Tenn. 37402

Office Hours: By Appointment

Phone and Voice Mail: (423) 756-4013, Ext. 1114

Email: rfowler@laet.org

Class Hours: MWF, 12:00-12:50

Classroom: Hunter Hall Room 307

Credit Hours: 3.00

REQUIRED BOOK:

Sandra Day O'Connor, The Majesty of the Law: Reflections of a Supreme Court Justice (Random House, 2004).

COURSE DESCRIPTION: The UTC catalog's course description reads as follows: "An examination of the role, operation and decision-making processes of the U.S. Supreme Court and lower courts."

COURSE CONTENT: Referring to lawyers, Edmund Burke said, "No other profession is more closely connected with actual life as the law. It concerns the highest of all temporal interests . . . property, reputation, the peace of all families, liberty, life even, and the very foundations of society." Although the judicial process intimately affects the daily life of all Americans, it seems to exist behind a veil, a veil that many incorrectly believe only lawyers can penetrate. Because of the importance of the creation, interpretation, and application of law, constitutional and otherwise, to the political, social, and economic life of individuals and the nation, and indispensable and independent courts as forums where competing visions of law, public policy, and justice collide, the study of the judicial process has a place within the liberal arts and sciences curriculum in general and the study of political science in particular.

The legal and political importance of federal and state courts has grown markedly since adoption of the Constitution and the landmark Judiciary Act of 1789. In this course, we will study the development, structure, and operation of American trial and appellate courts, with particular emphasis on the Supreme Court of the United States. We will examine the sources of law; the continuing influence of the judicial designs of "the Father of the Common Law," Henry II of England; the aims of the Framers of the Constitution concerning the judiciary; the power of judicial review forged by "the Great Chief," John Marshall; the doctrine of *stare decisis*; judicial selection and retention; the role of judges, lawyers, litigants, juries, and the media; the distinction between law and equity in the Anglo/American legal tradition; and development of the common law and the jurisprudence of equity and their importance today. Powerful and extraordinary judicial tools such as the injunction and the writ of *habeas corpus* will be addressed, and we will survey judicial systems in the states, including Tennessee, and the courts of Great Britain and other nations for comparison. Furthermore, current controversies such as tort, jury, class action, and sentencing reform will be discussed. Finally, we will review diverse philosophies of judging and their development, including the conflicting theories of constitutional interpretation of "original intent" or "originalism" on the right and the concept of an "evolutionary" or "living" Constitution on the left.

COURSE FORMAT: Silence cell phones prior to class. Also, there is to be no eating or private conversations during class sessions. Course activities consist of lectures, readings, discussions, films, and handouts. Testing will be on *all* course activities. Lectures are not simply restatements of material in the books, nor will every topic covered in the readings be discussed in class. Readings are a critical part of the course's content and will supplement the lectures. The best way to earn a high grade is to attend class faithfully, take good notes, and complete the assigned readings before class. Reading assignments will be given during class and are listed in the course outline below.

ATTENDANCE POLICY: Attendance is critical to the successful completion of this course. You are allowed three unexcused absences. You must produce valid and acceptable documentation for additional absences to be excused. Poor attendance can be a negative factor in the event of a borderline grade.

GRADING: Good class participation through meaningful questions and discussion can result in additional credit and is important in the event of a borderline grade at the end of the course. Again, poor attendance can be a negative factor in the event of a borderline grade. Grades will be determined by performance on three non-cumulative examinations and class participation. Each of the three examinations covers about one-third of the course, and I will curve each exam grade if no student earns 100 on the exam. Examinations are spaced at about five-week intervals and are announced well in advance. Course grades are calculated by adding together your scores on each of the three examinations. For example, a student who earned an 82 on exam 1, 90 on exam 2, and 85 on exam 3 would have a total point score of 257 and the final course letter grade of B. Final course letter grades are assigned on the basis of the following scale:

Point Range	Letter Grade
270 & above	A
240-269	B
210-239	C
180-209	D
0-179	F

MAKE-UP EXAMINATIONS: **Students are expected to take examinations when scheduled.** Documented and unavoidable conflicts with the examinations, such as medical problems or family emergencies, can entitle a student to a make-up examination. A make-up examination will be given only to students presenting written, valid, and acceptable reasons. Furthermore, notification of the absence on an examination day must be communicated to the instructor by telephone (756-4013, Ext. 105) or by e-mail (rfowler@laet.org) prior to the examination. **No make-up examinations are scheduled or given after graded examinations are returned to the class.**

ADA STATEMENT: Attention: If you are a student with a disability (e.g. physical, learning, psychiatric, vision, hearing, etc.) and think that you might need special assistance or a special accommodation in this class or any other class, call the Disability Resource Center (DRC) at 425-4006 or come by the office, 102 Frist Hall <http://www.utc.edu/Administration/DisabilityResourceCenter/>. If you find that personal problems, career indecision, study and time management difficulties, etc. are adversely affecting your successful progress at UTC, please contact the Counseling and Career Planning Center at 425-4438 or <http://www.utc.edu/Administration/CounselingAndCareerPlanning/>.

COURSE OUTLINE AND READINGS: Note: Reading assignments will be given during class. The below outline includes the pages of reading assignments and their general location within the course.

- I. **Law, Courts and Politics** (Reading: O'Connor: Preface ix-xvii; 2-8.)
- II. **Institutions of Law**
 - A. World Legal Systems
 - 1. Continental
 - 2. Socialist
 - 3. Islamic
 - 4. Common Law
 - B. The American Judiciary: Example for the World (Reading: O'Connor: 238-262)
 - C. Basic Judicial Concepts (Reading: O'Connor: 204-224)
 - 1. Federalism
 - 2. Sources of Law
 - a. Constitutions
 - b. Statutes
 - c. Regulations
 - d. Judicial Decisions
 - 3. Private and Public Law

4. Civil and Criminal Law
5. Substantive and Procedural Law
6. Civil Remedies
 - a. Money Damages: Compensatory and Punitive
 - b. Injunctions and Contempt
7. Doctrines of Access
- D. The English Common Law Heritage
 1. Legal Dark Ages: The Reign of Revenge and Superstition
 - a. Hue and Cry
 - b. Blood Feud
 - c. Outlawry
 2. Trial Before Henry II
 - a. Compurgation
 - b. Ordeal
 - c. Trial by Battle
 3. The Judicial Reforms of King Henry II: “The Father of the Common Law”
 - a. Royal Courts
 - b. *Stare Decisis*
 - c. Juries
 - d. Royal Writs
 4. *Magna Carta* (**Reading: O’Connor: 31-36**)
 5. Chancery, Equity, and Star Chamber: Extraordinary Justice
 6. The Making of American Law: Blackstone, Kent, and Story
- E. Federal Courts (**The Federalist No. 78 by Alexander Hamilton**)
 1. Alexander Hamilton and the Judiciary Act of 1789 (**Reading: O’Connor: 37-79**)
 2. Chief Justice John Marshall and Judicial Review
 3. History of Federal Courts (**Reading: O’Connor: 80-95**)
 4. Chief Justice Hughes vs. FDR’s Court-Packing Plan (**Reading: O’Connor: 123-131**)
 5. Chief Justices Taft and Burger: Supreme Judicial Architects Organization and Operation of Federal Courts (**Reading: O’Connor: 113-122; 139-146**)
- F. State Courts
 1. History of State Courts (Including Tennessee)
 2. Organization and Operation of State Courts
- III. **Interpreters of Law**
 - a. Lawyers and Legal Representation (**Reading: O’Connor: 152-201**)
 - i. Legal Education
 - ii. The Organization of Lawyers
 - iii. The Work and Types of Lawyers (**Reading: O’Connor: 225-235**)
 - b. Judges
 - i. Judicial Selection and Retention (**Reading: O’Connor: 17-23**)
 - ii. Judicial Duties
- IV. **Consumers of Law**
 - a. Litigants
 - b. Interest Groups
 - c. Media
- V. **Trial Courts: Criminal and Civil**
 - a. The Preliminary Stages of Criminal Cases
 - b. Bargaining and Sentencing in Criminal Courts
 - c. The Preliminary Stages in Civil Cases
 - d. Tort Reform and Alternative Dispute Resolution
 - e. Dispositions of Civil Cases
 - f. Trial (Bench and Jury Trials)
 - g. Jury Reform (**Reading: O’Connor: 213-224**)
- VI. **Appellate Courts** (**Reading: O’Connor: 147-150**)
 - a. The Appellate Process Precedents and Case Reports (**Reading: O’Connor: 24-30**)
 - b. The Supreme Court: Deciding What to Decide (**Reading: O’Connor: 9-16; 263-272**)
 - c. The Supreme Court: Justices and Their Decisions
- VII. **Philosophies of Judging and Theories of Constitutional Interpretation**
 - a. The Golden Age, Declaratory Jurisprudence and The Plain Meaning Rule
 - b. Justice Oliver Wendell Holmes, Jr. (**Reading: O’Connor: 98-112**)
 - c. Sociological Jurisprudence and Legal Realism
 - d. An Evolutionary Constitution vs. Originalism
 - i. The Liberals (**Reading: O’Connor: 132-138**)
 - ii. The Conservatives
 - e. Other Schools of Legal Thought: From the Left and From the Right