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 make 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:

| Two papers = 35% each (You may rewrite your paper as often as you like, for a new grade.) |
|Assignments & class participation = 30% |

***Final rewrites due: Wednesday March 15, at 2:00

***Readings should be completed prior to class

Texts

Levi, *An Introduction to Legal Reasoning*
Frank Murphy, *Courts, Judges and Politics*
Rosenberg, *The Hollow Hope* (optional, on reserve)
***additional readings in coursepack and on reserve***

Course Outline

Week 1: Introduction: Law vs. Politics, Law vs. Democracy

Murphy, Ch. 14 (pp. 598-645)

Widner, *Building Judicial Independence in Common Law Africa*

· Assignment: Judicial independence exercise

Week 2: Reasoning from Cases

Murphy, Ch. 10 (pp. 389-430)

Levi, pp. 1-27


Week 3: Reasoning from Statutes

Murphy, Ch. 11 (pp. 431-478)
Levi, pp. 27-57

· Assignment: TVA scenario, 2-3 pp.

Week 4: Constitutional Interpretation

Murphy, Ch. 12 (pp. 479-547)
Levi, 57-104
Fish, *Working on the Chain Gang* [R]

Week 5: The Judge's Role

Murphy, Ch. 1, 13 (pp. 14-18, 548-596)

· Assignment: Brief the Bob Jones Case, 3-4 pp.

Week 6: The Legal Community

*Delta Dynamics, Inc. v. Arioto*, 446 P.2d 785 (1968)
*Trident Center v. Connecticut General Life Ins. Co.*, 847 F.2d 564 (9th Cir. 1988)
Wice, *Judges and Lawyers* (pp. 34-47, 52-62) [R]

Week 7: Institutional Structure: Appointment

Murphy, Ch. 4 (pp. 133-180)
Carter, *The Confirmation Mess*
CQ, Clinton Closes in on a Nominee
*SF Chronicle & LA Times* articles

· Assignment: Fletcher and White confirmations, 3-4 pp.

Week 8: Institutional Structure: Execution

Murphy, Ch. 6, 7 (pp. 243-318)
Rosenberg, *The Hollow Hope*, pp. 1-106

Week 9: Using the Courts to Achieve Policy Change

Murphy, Ch. 8 (pp. 319-350)
McCann, *Taking Reform Seriously* (pp. 106-121) [R]
Galanter, *Why the "Haves" Come Out Ahead* (pp. 199-211) [R]
Brill, *Trial By Jury* (pp. 418-448) [R]
Scheingold, *The Contradictions of Radical Law Practice*
Assignment: Compare Rosenberg and McCann, 2-3 pp.