

## **Additional Discussion Questions** **for Class #2 (Tues., April 8<sup>th</sup>)**

In addition to the discussion questions at the end of Carp, Chap. 4, please consider thoughtfully the following questions as you read the assigned materials and prepare for class #2. For all questions, jot down short written notes to yourself, so that you will be ready for class discussion. Further, prepare an informal written response TO BE TURNED IN BY EMAIL (to gsmith@cwsl.edu) OR IN PERSON, NO LATER THAN THE END OF CLASS #2 (Tuesday, April 8) to several of the questions, as follows:

- Answer EITHER question 1 or question 2 (use one sentence for each “opportunity” identified), and
- Answer EITHER question 3 (using one sentence for each example) or question 4 (using two or three sentences for prompt 3A and two or three sentences for prompt 3B), and
- Answer ONE of the following questions in two or three sentences: question 5, question 6, or question 7.

(As stated in the Course Information document, your response will be one of several potential bases for being “bumped up” to the higher of two grade categories if you are “close to the line” between two categories.)

### The Power and Limitations of Judicial Decision-Makers

Based on the readings for Class #2, your previous studies as a college and pre-college student, and your personal experience and observations as a resident of America, please answer the following questions:

1. By virtue of their power and position in the American legal system, judges have significant opportunities to influence – for better or worse – individuals, public and private entities, and the communities and society in which they function. Identify at least two such opportunities in each of the following categories:
  - A. Trial courts presiding over criminal trials.
  - B. *State* trial courts presiding over civil litigation.
  - C. *Federal* trial courts presiding over civil litigation.
  - D. *State* appellate courts (including state supreme courts) deciding issues raised in criminal and civil litigation.
  - E. *Federal* appellate courts (including the U.S. Supreme Court) deciding issues raised in criminal and civil litigation.
  
2. Despite their substantial power and influence, as explored in Question 1, the reality is that there are also many important issues and policy matters that American Judges at all levels are *not* substantially able to influence. *Ignoring for this question the limitations imposed by the U.S. Constitution*, identify at least two such opportunities in each of the following categories:
  - A. Trial courts presiding over criminal matters.

- B. Trial courts presiding over civil litigation.
- C. Appellate courts (including state supreme courts and the United States Supreme Court) deciding issues raised in criminal litigation.
- D. Appellate courts (including state supreme courts and the United States Supreme Court) deciding issues raised in civil litigation.

3. *No longer ignoring, but in fact focusing on, the U.S. Constitution*, answer the following:

- A. What are at least two examples of limitations the U.S. Constitution places on judges at all levels?
- B. What are at least two examples of limitations the U.S. Constitution places on *federal* judges.

### The Awkward Position of Judges in a Majoritarian Democracy

Based on the readings for class #2, and thinking about what you already know about the American constitutional and political system, please answer the following questions:

4. The national governmental framework created by the U.S. Constitution, as well as the parallel state governmental frameworks created by individual state constitutions, generally assume that important public policies will be established by

- democratically accountable officials
- representing to a significant degree the will of a majority (or super-majority).

A. How do specific provisions in the U.S. Constitution reflect the assumptions of majoritarian democracy?

B. Based on your other knowledge, how do the state and local governmental frameworks in California and other states reflect the assumptions of majoritarian democracy?

5. How do the specific provisions and general design of the U.S. Constitution depart significantly from the general assumptions stated in Question 4 when it comes to the power and structure of the *federal* judiciary?

6. How do the specific provisions and general design of the U.S. Constitution still permit democratically accountable officials and majoritarian influences to limit and control the *federal* judiciary?

7. Even in states where state judges are elected or otherwise subject to electoral control (e.g., through periodic retention elections or citizen-initiated recall votes) how do the roles and powers of state judges still depart from the general assumptions of a majoritarian democracy?