
JUDICIAL POLITICS

POLITICAL SCIENCE 705

Fall 2006
316 Hamilton Hall

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The study of courts as political institutions is an adverse notion to many. Indeed, it is common to hear judges and lawyers alike celebrate the law as the essence of governmental will, as though the law dictated the path of judicial choice. Precious few political scientists adhere to the belief that courts simply apply the law. Even law professors, who for years were dismissive of empirical legal scholarship, have begun to take an active interest in the quantitative analysis of the judiciary and concede that judges are motivated by more than simply a desire to make sound legal policy.

At the same time, it would be foolhardy to regard the judiciary as interchangeable with the elected branches of the government. The business of the judiciary is very much constrained by the law. As one scholar famously put the matter, “Political scientists who have done so much to put the ‘political’ in ‘political jurisprudence’ need to emphasize that it is still ‘jurisprudence.’ It is judging in a political context, but it is still judging; and judging is something different from legislating or administering.” Of course, where the intersection of law and politics occurs may be uncertain, but the convergence of courts and public policy makes systematic inquiry into judicial decision making a distinctive and fascinating task.

In this seminar, you will consider a broad cross-section of the scholarly research on judicial politics. In one sense, the work you will be reading is simply a reflection of the interests of those who study the courts. The U.S. Supreme Court, for example, being the nation’s court of greatest import has, not surprisingly, garnered a disproportionate share of scrutiny. Consequently, most of the required reading here reflects that concentration. There are, of course, other important research orientations; studies of civil and criminal litigation, decision making in trial courts, state supreme courts, and high national appellate courts, to name but a few. The syllabus considers several of these issues, as well. In addition, your investigation will lead you to examine a variety of ancillary actors that interact with the courts. You will also contemplate courts in a broader context, considering their potential roles in government more generally.

Thus, on a weekly basis, you will be expected to digest various samples of the literature that touch upon some of the leading questions within this subfield: What are the factors that govern the selection of judges at the both the state and federal levels? How does a court with a completely discretionary agenda formulate its plenary docket? Are judges constrained in their behavior because they serve in a judicial capacity? Do judges decide cases based upon other factors, and --- if so --- what are those factors? Under what guises do secondary players engage the courts and with what implications? What is the nature of the relationship between courts and

mass opinion? How do courts interact with other publics? How well-suited --- if at all --- is the judiciary to the craft of policy making? And do those policies make any difference to society? By the end of the semester, you should have a fairly firm grasp on some of the leading answers to these questions.

REQUIREMENTS

Your obligations for this seminar are three-fold. First, you must read the materials before our meetings, attend the seminar, and serve as an active participant in our discussions. As a part of that requirement, you will be asked to lead our weekly discussions on a rotating basis and to read and present some of the suggested readings. Your performance in class will constitute 20% of your grade. Second, I will ask you to identify two topics on the syllabus that are of particular interest to you and to prepare a 5-page evaluative paper to the readings slated for each of those sections. These short papers provide you with the opportunity to think critically about specific set of readings by writing on such subjects as the quality of the research, special problems posed by the research, and strategies for future research. These will be due in class the week following our discussion of the designated topic. Each of these two papers will be worth 20% of your grade. Fourth, I will ask you to write a more substantial paper that outlines a research design for a future project. The precise contours of your paper will be established in consultation with me. This paper will constitute the remaining 40% of your grade.

Readings. Most of the readings will come from journals of political science and law. The happy consequence being that virtually all will be available on-line. In addition, I would like you to obtain a copy of each of these books:

William Haltom and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago: University of Chicago Press.

H.W. Perry, Jr. 1991. *Deciding to Decide: Agenda Setting on the United States Supreme Court*. Cambridge: Harvard University Press.

Gerald N. Rosenberg. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University Press of Chicago.

Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

In addition, there are a number of other books and articles that I would encourage you to consult, inasmuch as they are standard references within the field. If you plan to do future research in the field of judicial behavior, or if you would like to begin to do further reading on a particular topic, these will be useful resources. I outline them below.

SUGGESTED RESOURCES

Articles. There are a number of excellent articles that survey the state of research on judicial politics, analyzing the subfield's theories, methods, and conclusions. At some point, you may find it useful to peruse some of them as a means of acquiring a wider scope on this body of

work, its changing character, and the leading controversies within it. A few are somewhat dated, but you will find that they still offer useful perspectives.

- Lawrence Baum. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47:749-768.
- James L. Gibson. 1983. "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior." *Political Behavior* 5:7-49.
- Martin Shapiro. 1993. "Public Law and Judicial Politics." In *Political Science: The State of the Discipline II*, ed. Ada W. Finifter. Washington: American Political Science Association.
- Elliot E. Slotnick. 1991. "Judicial Politics." In Vol. 4 of *Political Science: Looking to the Future*, ed. William Crotty. Evanston: Northwestern University Press.

Books. In recent years, several fine volumes have been produced --- or updated --- that have aided scholars of judicial politics in a number of important ways. As a result of such work, research questions have been better formulated, useful data sources have been identified, and rich historical contexts have been brought to bear upon the study of the judiciary. These may prove useful in your current or future work; thus, depending upon your needs, it will be worthwhile to consider one or more of them.

- Lawrence Baum. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.
- Joan Biskupic and Elder Witt. 1997. *Guide to the U.S. Supreme Court*. 2nd ed. Washington: Congressional Quarterly Press.
- Cornell W. Clayton and Howard Gillman. 1999. *Supreme Court Decision-Making: New Institutional Approaches*. Chicago: University of Chicago Press.
- Lee Epstein, Jeffrey A. Segal, Harold J. Spaeth, and Thomas G. Walker. 1996. *The Supreme Court Compendium: Data, Decisions, and Developments*, 2nd ed. Washington: Congressional Quarterly Press.
- Kermit L. Hall and Kevin T. McGuire. 2005. *Institutions of American Democracy: The Judiciary*. New York: Oxford University Press.
- Nancy Maveety. 2003. *Pioneers of Judicial Behavior*. Ann Arbor: University of Michigan Press.

OUTLINE OF THE COURSE

1. What determines who serves? (September 11)

- Byron J. Moraski and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science* 43:1069-1095.
- Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 5.
- Lee Epstein, Rene Lindstadt, Jeffrey A. Segal, and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68:296.

Melinda Gann Hall. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54:427-446.

Suggested

- Timothy M. Hagle. 1993. "Strategic Retirements: A Political Model of Turnover on the United States Supreme Court." *Political Behavior* 15:25-48.
- Timothy R. Johnson and Jason Roberts. 2004. "The Use of Presidential Capital During the Supreme Court Confirmation Process." *Journal of Politics* 66:663-583.
- David Klein and Lawrence Baum. 2001. "Ballot Information and Voting Decisions in Judicial Elections." *Political Research Quarterly* 54:709-728.
- Tajuana D. Massie, Thomas G. Hansford, and Donald R. Songer. 2004. "The Timing of Presidential Nominations to the Lower Federal Courts." *Political Research Quarterly* 57:145-154.
- Charles R. Shipan and Megan L. Shannon. 2003. "Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations." *American Journal of Political Science* 47: 654.
- John Szmer and Donald Songer. 2005. "The Effects of Information on the Accuracy of Presidential Assessments of Supreme Court Nominee Preferences." *Political Research Quarterly* 58:151-160.
- Christopher Zorn and Steven R. Van Winkle. 2000. "A Competing Risks Model of U.S. Supreme Court Vacancies, 1789-1992." *Political Behavior* 22:145-166.

2. Agenda setting (September 18)

- H.W. Perry, Jr. 1991. *Deciding to Decide: Agenda Setting on the United States Supreme Court*. Cambridge: Harvard University Press. Chapters 2-3, 6-7.
- Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 5.
- Gregory A. Caldeira, John R. Wright, and Christopher Zorn. 1999. "Strategic Voting and Gatekeeping in the Supreme Court." *Journal of Law, Economics and Organization* 15:549-72.

Suggested

- Robert L. Boucher, Jr. and Jeffrey A. Segal. 1995. "Supreme Court Justices as Strategic Decision Makers: Aggressive Grants and Defensive Denials on the Vinson Court." *Journal of Politics* 57:824-837.
- Gregory A. Caldeira, and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82:1109-1127.
- Kevin T. McGuire and Barbara Palmer. 1995. "Issue Fluidity on the U.S. Supreme Court." *American Political Science Review* 89:691-702.

3. The attitudinal model of decision making (September 25)

Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 6.
Symposium: The Supreme Court Forecasting Project. 2004. *Perspectives on Politics*.

Suggested

Lawrence Baum. 1988. "Measuring Policy Change in the U.S. Supreme Court." *American Political Science Review* 82:905-912.
Andrew D. Martin and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999." *Political Analysis* 10:134-153.
Jeffrey A. Segal and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83:557-565.

4. The legal model of decision making

(October 2)

Howard Gillman. 2001. "What Has Law Got to Do With It?" *Law & Social Inquiry* 26:465-504.
Mark J. Richard and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96:305-321.
Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 7.

Suggested

Pamela C. Corley, Robert M. Howard, and David C. Nixon. 2005. "The Supreme Court and Opinion Content: The Use of the Federalist Papers." *Political Research Quarterly* 58:329-340.
John B. Gates, and Glenn A. Phelps. 1996. "Intentionalism in Constitutional Opinions." *Political Research Quarterly* 49:245-262.
Tracey E. George and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86:323-337.
Jeffrey A. Segal and Harold J. Spaeth. 1996. "The Influence of Stare Decisis on the Votes of U.S. Supreme Court Justices." *American Journal of Political Science* 40:971-1003.
Donald R. Songer and Stefanie A. Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *American Journal of Political Science* 40:1049-1063.

5. Decision making in a collegial context

(October 9)

Paul Brace and Melinda Gann Hall. 1993. "Integrated Models of Judicial Dissent." *Journal of Politics* 55:914-935.
Robert H. Dorff and Saul Brenner. 1992. "Conformity Voting on the United States

Supreme Court.” *Journal of Politics* 54:762-775.

J. Woodford Howard. 1968. “On the Fluidity of Judicial Choice.” *American Political Science Review* 62:43-56.

Suggested

Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. Washington: Congressional Quarterly, Inc.

Mark S. Hurwitz and Joseph V. Stefko. 2004. “Acclimation and Attitudes: Newcomer Justices and Precedent Conformance on the Supreme Court.” *Political Research Quarterly* 57:121-129.

David E. Klein. 2002. *Making Law in the United States Courts of Appeals*. New York: Cambridge University Press.

Laura Langer. 2002. *Judicial Review in State Supreme Courts: A Comparative Study*. Albany: State University of New York Press.

Forrest Maltzman, James F. Spriggs, II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.

Walter F. Murphy. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.

Patrick D. Schmidt and David A. Yalof. 2004. “The Swing Voter Revisited: Justice Anthony Kennedy and the First Amendment Right of Free Speech.” *Political Research Quarterly* 57:209-217.

6. Strategy, coalitions, and leadership (October 16)

Theodore S. Arrington and Saul Brenner. 2004. “Strategic Voting for Damage Control on the Supreme Court.” *Political Research Quarterly* 57:565-573.

Stacia L. Haynie. 1992. “Leadership and Consensus on the U.S. Supreme Court.” *Journal of Politics* 54:1158-1169.

Forrest Maltzman and Paul J. Wahlbeck. 1996. “May It Please the Chief? Opinion Assignments in the Rehnquist Court.” *American Journal of Political Science* 40:421-443.

Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 9.

Suggested

Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. Washington: Congressional Quarterly, Inc.

Forrest Maltzman, James F. Spriggs, II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.

Walter F. Murphy. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.

Thomas H. Hammond, Chris W. Bonneau, and Reginald S. Sheehan. 2005. *Strategic Behavior and Policy Choice on the U.S. Supreme Court*. Palo Alto, CA: Stanford University Press.

7. Courts under the separation of powers

(October 23)

- John A. Ferejohn and Barry R. Weingast. 1991. "A Positive Theory of Statutory Interpretation." *International Review of Law and Economics* 12:263-279.
- Lori Hausegger, Lawrence Baum. 1999. "Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation." *American Journal of Political Science* 43:162-185.
- Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 8.
- Georg Vanberg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45:346-361.

Suggested

- Jeb Barnes. 2000. *Overruled? Legislative Overrides, Pluralism, and Contemporary Court-Congress Relations*. Palo Alto, CA: Stanford University Press.
- Robert Lowry Clinton. 1994. "Game Theory, Legal History, and the Origins of Judicial Review: A Revisionist Analysis of *Marbury v. Madison*." *American Journal of Political Science* 38:285-302.
- Gretchen Helmke. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy." *American Political Science Review* 96:291-303.
- J. Mitchell Pickerill. 2004. *Constitutional Deliberation in Congress: The Impact of Judicial Review in a Separated System*. Durham, NC: Duke University Press.

8. Representation of interests in the courts

(October 30)

- Michael Bailey, Brian Kamoie, and Forrest Maltzman. 2005. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49-72.
- Thomas G. Hansford. 2004. "Lobbying Strategies, Venue Selection, and Organized Interest Involvement at the U.S. Supreme Court." *American Politics Research* 32:170-197.
- Timothy R. Johnson, Paul J. Wahlbeck, and James F. Spriggs, II. 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *American Political Science Review* 100:99-113.
- Steven C. Tauber. 1998. "On Behalf of the Condemned? The Impact of the NAACP Legal Defense Fund on Capital Punishment Decision Making in the U.S. Courts of Appeals." *Political Research Quarterly* 51:191-219.

Suggested

- Lee Epstein and Joseph F. Kobylka. 1992. *The Supreme Court and Legal Change: Abortion*

- and the Death Penalty*. Chapel Hill, NC: University of North Carolina Press.
- Kevin T. McGuire. 1998. "Explaining Executive Success in the U. S. Supreme Court." *Political Research Quarterly* 51:505-526.
- Donald R. Songer and Reginald S. Sheehan. 1993. "Interest Group Success in the Courts: Amicus Participation in the Supreme Court." *Political Research Quarterly* 46:339-354.
- James F. Spriggs, II and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly* 50:365-386.

9. Public opinion
(November 6)

- Charles H. Franklin and Liane C. Kosaki. 1989. "The Republican School Master: The Supreme Court, Public Opinion, and Abortion." *American Political Science Review* 83:751-771.
- Timothy Johnson and Andrew Martin. 1998. "The Public's Conditional Response to Supreme Court Decisions." *American Political Science Review* 92:299.
- James L. Gibson and Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33:535-556.
- Kevin T. McGuire and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *Journal of Politics* 66:1018-1035.

Suggested

- Sara Benesh. 2006. "Understanding Public Confidence in American Courts." *Journal of Politics* 68:534-550.
- Gregory A. Caldeira and James L. Gibson. 1992. "The Etiology of Support for the Supreme Court." *American Journal of Political Science* 36:635-664.
- James L. Gibson, Gregory A. Caldeira, Lester Kenyatta Spence. 2003. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science* 47:354-367.
- William Mishler and Reginald Sheehan. 1993. "The Supreme Court as a Counter-majoritarian Institution? The Impact of the Public Opinion on Supreme Court Decisions." *American Political Science Review* 87:87-101.
- Helmut Norpoth and Jeffrey A. Segal. 1994. "Comment: Popular Influence on Supreme Court Decisions." *American Political Science Review* 88:711-716.

10. Implementation and impact of judicial policies
(November 13)

- Gerald N. Rosenberg. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University Press of Chicago.

Suggested

- Robert H. Birkby. 1966. "The Supreme Court and the Bible Belt: Tennessee Reaction to the Schempp Decision." *Midwest Journal of Political Science* 10:304-319.
- Jon R. Bond and Charles A. Johnson. 1982. "Implementing a Permissive Policy: Hospital Abortion Services after *Roe v. Wade*." *American Journal of Political Science* 26:1-24.
- Lauren Bowen. 1995. "Attorney Advertising in the Wake of *Bates v. State Bar of Arizona*." *American Politics Quarterly* 23:461-484.
- Paul G. Cassell and Richard Fowles. 1998. "Handcuffing the Cops? A Thirty-Year Perspective on Miranda's Harmful Effects on Law Enforcement." *Stanford Law Review* 50:1055.
- Richard H. Sander. 2004. "A Systemic Analysis of Affirmative Action in American Law Schools." *Stanford Law Review* 57:367-483.

11. Litigation and the role of courts

(November 20)

William Haltom and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago: University of Chicago Press.

Suggested

- Cynthia L. Cates and Wayne V. McIntosh. 2001. *Law and the Web of Society*. Washington: Georgetown University Press.
- Marc Galanter. 1974. "Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9:95-160.
- Howard Gillman. 2001. *The Votes That Counted: How the Court Decided the 2000 Presidential Election*. Chicago: University of Chicago Press.
- Donald L. Horowitz. 1977. *The Courts and Social Policy*. Washington: The Brookings Institution.

12. National and supranational courts

(November 27)

- Charles R. Epp. 1996. "Do Bills of Rights Matter? The Canadian Charter of Rights and Freedoms." *American Political Science Review* 90:765-779.
- Lee Epstein, Jack Knight, and Olga Shvetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law & Society Review* 35:117-164.
- Walter Mattli and Anne-Marie Slaughter. 1998. "Revisiting the European Court of Justice." *International Organization* 52:177-210.

Suggested

- Karen Alter. 1998. "Who are the 'Masters of the Treaty'? European Governments and the European Court of Justice." *International Organization* 52:121-148.
- Gregory A. Caldeira, and James L. Gibson. 1995. "The Legitimacy of the Court of Justice

- in the European Union: Models of Institutional Support.” *American Political Science Review* 89:356-376.
- Geoffrey R. Garrett, Daniel Kelemen, and Heiner Schulz. 1998. “The European Court of Justice, National Governments, and Legal Integration in the European Union.” *International Organization* 52:149-176.
- Alec Stone. 1992. *The Birth of Judicial Politics in France: The Constitutional Council in Comparative Perspective*. New York: Oxford University Press.
- Alec Stone-Sweet and Thomas L. Brunell. 1998. “Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community.” *American Political Science Review* 92:63-82.
- Georg Vanberg. 2001. “Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review.” *American Journal of Political Science* 45:346-361.

13. Intercourt relationships
(December 4)

- Gregory A. Caldeira. 1985. “The Transmission of Legal Precedent: A Study of State Supreme Courts.” *American Political Science Review* 79:178-93.
- David E. Klein and Robert J. Hume. 2003. “Fear of Reversal as an Explanation of Lower Court Compliance.” *Law & Society Review* 37:579-606
- Francine Sanders. 1995. “*Brown v. Board of Education*: An Empirical Reexamination of Its Effects on Federal District Courts.” *Law & Society Review* 29:731-756.

Suggested

- John C. Kilwein, and Richard A. Brisbin, Jr. 1997. “Policy Convergence in a Federal Judicial System: The Application of Intensified Scrutiny Doctrines by State Supreme Courts.” *American Journal of Political Science* 41:122-48.
- Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron. 1994. “The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions.” *American Journal of Political Science* 38:673-96.