
JUDICIAL POLITICS

POLITICAL SCIENCE 705

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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.

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.

REQUIREMENTS

Your obligations for this seminar are three-fold. First (and lest there be any doubt), you must read the materials before our meetings, attend the seminar, and serve as an active participant in our discussions. Your performance in class will constitute 20% of your grade. Second, I will ask you to identify three topics on the syllabus that are of particular interest to you and to prepare

a 3-5 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 on the day that we cover the designated topic. Each paper will be worth 15% of your grade. Third, I will ask you to write a more substantial paper on a topic related to the subject matter of the course. Ideally, you would undertake a piece of original research --- there are ample data that are readily available for this purpose --- but you could also outline a research design for a future project. The paper might take other forms, as well, but the precise contours of your paper will be established in consultation with me. This paper will constitute the remaining 35% of your grade.

Readings. Most of the readings will come from journals of political science and law. Thus, they will virtually all 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 that I would encourage you to consult, if not purchase, 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 books will be useful resources:

1. What determines who serves on the federal courts?
(January 24)

A. The President

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.

B . The Senate

Jeffrey A. Segal and Harold J Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 5.

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.

C. The Judges

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.

Suggested

Timothy M. Hagle. 1993. A 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. A The Use of Presidential Capital During the Supreme Court Confirmation Process. @ *Journal of Politics* 66:663-683.

2. State judicial selection

(January 31)

A. Selection methods

Alozie, Nicholas O. 1996. A Selection Methods and the Recruitment of Women to State Courts of Last Resort. @ *Social Science Quarterly* 77:110-26.

Emmert, Craig F. and Henry R. Glick. 1988. A The Selection of State Supreme Court Justices. @ *American Politics Quarterly* 16:445-465.

Graham, Barbara L. 1990. A Do Judicial Selection Systems Matter? A Study of Black Representation on State Courts. @ *American Politics Quarterly* 18:316-336.

B. Problems with electing judges

Hall, Melinda Gann. 2001. A State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform. @ *American Political Science Review* 95:315-30.

Klein, David, and Lawrence Baum. A Ballot Information and Voting Decisions in Judicial Elections. @ *Political Research Quarterly* 54:709-728.

3. Agenda setting

(February 7)

A. The Process

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

Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Ch. 5.

B. Strategies

Gregory A. Caldeira, John R. Wright, and Christopher Zorn. 1999. A Strategic Voting and Gatekeeping in the Supreme Court. @ *Journal of Law, Economics and Organization* 15:549-572.

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

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.

4. The attitudinal model of decision making

(February 14)

A. Assessing the impact of preferences

- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Ch. 6.
- Review Symposium, *The Supreme Court and the Attitudinal Model*. 1994. *Law and Courts* 4:3-11.
- Symposium: The Supreme Court Forecasting Project. 2004. *Perspectives on Politics*.

Suggested

- 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.

5. The legal model of decision making

(February 21)

A. Why should law matter?

- Howard Gillman. 2001. "What Has Law Got to Do With It?" *Law & Social Inquiry* 26:465-504.
- Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Ch. 7.

B. Evidence

- 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.
- Mark J. Richard and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96:305-321.

Suggested

- 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.
- 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.

6. Decision making in a collegial context
(February 28)

Dorff, Robert H., and Saul Brenner. 1992. AConformity Voting on the United States Supreme Court.@ *Journal of Politics* 54:762-775.

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington: Congressional Quarterly, Inc. Chapters 1-3

Suggested

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

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

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

7. Strategy, coalitions, and leadership
(March 7)

Maltzman, Wahlbeck, Spriggs

A. Building coalitions

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington: Congressional Quarterly, Inc. Chapters 4.

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

B. Leadership

Haynie, Stacia L. 1992. ALeadership and Consensus on the U.S. Supreme Court.@ *Journal of Politics* 54:1158-1169.

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

Suggested

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.

8. Courts under the separation of powers
(March 21)

Ferejohn and Weingast, (for simple view of veto players --- see Liberty Fund)]
Or McNollgast 1995 Southern Cal Law Rev.

Clinton
Hausegger and Baum
Segal and Spaeth Section

Recommend: Barnes Overruled, and Pickerill CUP

A. Courts as strategic actors

Clinton, Robert Lowry. 1994. AGame Theory, Legal History, and the Origins of Judicial Review: A Revisionist Analysis of *Marbury v. Madison*.@ *American Journal of Political Science* 38:285-302.

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington: Congressional Quarterly, Inc. Chapters 5.

Helmke, Gretchen. 2002. AThe Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy.@ *American Political Science Review* 96:291-303.

Vanberg, Georg. 2001. ALegislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review.@ *American Journal of Political Science* 45:346-361.

B. Courts as sincere actors

Segal, Jeffrey A. 1997. ASeparation-of-Powers Games in the Positive Theory of Congress and Courts.@ *American Political Science Review* 91:28-44.

9. Representation of interests in the courts
(March 28)

A. Are interest groups influential?

Hansford, Thomas G. 2004. ALobbying Strategies, Venue Selection, and Organized Interest Involvement at the U.S. Supreme Court.@ *American Politics Research* 32:170-197.

Songer, Donald R., and Reginald S. Sheehan. 1993. AInterest Group Success in the Courts: Amicus Participation in the Supreme Court.@ *Political Research Quarterly* 46:339-354.

Spriggs, James F., II and Paul J. Wahlbeck. 1997. AAmicus Curiae and the Role of Information at the Supreme Court.@ *Political Research Quarterly* 50:365-386.

Tauber, Steven C. 1998. AOn 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.

B. The significance of legal representation

McGuire, Kevin T. 1995. ARepeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success.@ *Journal of Politics* 57:187-196.

10. Public opinion

(April 4)

. McGuire / Stimson

Franklin / Kosakai

APSR controversy

A. How do courts affect public opinion?

Franklin, Charles H. and Liane C. Kosaki. 1989. AThe Republican School Master: The Supreme Court, Public Opinion, and Abortion.@ *American Political Science Review* 83:751-771.

Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. AThe Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?@ *British Journal of Political Science* 33:535-556.

Johnson, Timothy and Andrew Martin. 1998. AThe Public's Conditional Response to Supreme Court Decisions.@ *American Political Science Review* 92:299.

B. Does public opinion affect the courts?

Mishler, William and Reginald Sheehan. 1993. AThe Supreme Court as a Counter-majoritarian Institution? The Impact of the Public Opinion on Supreme Court Decisions@ *American Political Science Review* 87:87-101.

Norpoth, Helmut, and Jeffrey A. Segal. 1994. AComment: Popular Influence on Supreme Court Decisions.@ *American Political Science Review* 88:711-716.

McGuire, Kevin T., and James A. Stimson. 2004. AThe Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences.@ *Journal of Politics* 66:1018-1035.

11. Relationship between Courts

(April 11)

A. Horizontal communications

Caldeira, Gregory A.. 1985. AThe Transmission of Legal Precedent: A Study of State Supreme Courts,@ *American Political Science Review* 79:178-93.

Kilwein, John C., and Richard A. Brisbin, Jr. 1997. APolicy Convergence in a Federal Judicial System: The Application of Intensified Scrutiny Doctrines by State Supreme Courts.@ *American Journal of Political Science* 41:122-48.

B. Vertical communication

Klein, David E., and Robert J. Hume. 2003. AFear of Reversal as an Explanation of

- Lower Court Compliance.@ *Law & Society Review* 37:579-606
- Sanders, Francine. 1995. ABrown v. Board of Education: An Empirical Reexamination of Its Effects on Federal District Courts,@ *Law & Society Review* 29:731-756.
- Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron, AThe Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions,@ *American Journal of Political Science* 38:673-96.

12. Implementation of judicial policies
(April 18)

Keep Spriggs and add Larry on specificity and implementation along with Rosenberg

- Birkby, Robert H. 1966. AThe Supreme Court and the Bible Belt: Tennessee Reaction to the Schempp Decision.@ *Midwest Journal of Political Science* 10:304-319.
- Bond Jon R., and Charles A. Johnson. 1982. AImplementing a Permissive Policy: Hospital Abortion Services after Roe V. Wade.@ *American Journal of Political Science* 26:1-24.
- Bowen, Lauren. 1995. AAttorney Advertising in the Wake of Bates v. State Bar of Arizona.@ *American Politics Quarterly* 23:461-484.
- Cassell, Paul G., and Richard Fowles. 1998. AHandcuffing the Cops? A Thirty-Year Perspective on Miranda=s Harmful Effects on Law Enforcement.@ *Stanford Law Review* 50:1055.

13. What impact do courts have?
(April 25)

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

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

14. Supranational Courts

- Alter, Karen. 1998. AWho are the Masters of the Treaty=? European Governments and the European Court of Justice.@ *International Organization* 52:121-148
- Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schulz. 1998. AThe European Court of Justice, National Governments, and Legal Integration in the European Union.@ *International Organization* 52:149-176.
- Mattli, Walter, and Anne-Marie Slaughter. 1998. ARevisiting the European Court of Justice.@ *International Organization* 52:177-210.
- Stone-Sweet, Alec, and Thomas L. Brunell. 1998. AConstructing a Supranational Constitution: Dispute Resolution and Governance in the European Community.@

Judicial independence

Ramseyer, Mark. (Liberty Fun thing)

Keith E. Whittington, "Legislative Sanctions and the Strategic Environment of Judicial Review," *International Journal of Constitutional Law (ICon)* 1.3 (July 2003):446

Helmke, APSR

Comparative Courts

European Court of Justice, (Mattli and Slaughter v. Geoffrey Garrett, in IO)

Judicial politics in Europe, Stone Sweet, "Birth of Judicial Politics in France."

Mauro Cappelletti, "Judicial Process in Comparative Perspective."

Vanberg, 2001 AJPS

Epstein and Olga Shvetsova and Knight, too (

Anne-Marie Slaughter and Walter Mattli, "Revisiting the European Court of Justice," *International Organization* 52 (1998): 177

Helmke, Gretchen. 2005. *Courts Under Constraints: Judges, Generals, and Presidents in Argentina*. New York: Cambridge University Press.