

POL 253: Judicial Process
Spring 2003

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I Objective

This course is designed to provide graduate students with a comprehensive introduction to the judiciary and judicial decision-making in the United States, with a heavy emphasis on the U.S. Supreme Court. At the end of the semester, students should gain firm understanding of the theories, substance, and policy impact of the decisions judges/justices make. I am hopeful that we can proceed with a minimum of lecture and a maximum of informed discussion of the readings. Classroom participation, including oral presentations, is required and will be taken into account to determine final grades.

II Texts

The following required texts are available at the University bookstore.

- Segal & Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*, (SCAMR). Cambridge University Press
- Maltzman, Spriggs, and Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*, Cambridge University Press
- Songer, Sheehan, and Haire. 2000. *Continuity and Change on the United States Courts of Appeals*. The University of Michigan Press
- Gillman and Clayton, eds. 1999. *The Supreme Court in American Politics*. The University of Kansas Press

All assigned articles are on reserve in the political science library in Hamilton Hall, second floor. Available for purchase is Epstein et al. *The Supreme Court Compendium*, 2nd edition, which is the Supreme Court version of CQ's Vital Statistics series, and thus may be useful as a source of data for your research papers. You may order a copy directly from CQ Press. At some point during the first half of the semester, you will find it useful to read the following broad literature surveys of judicial politics to gain a deeper understanding of where the subfield has been and where it is headed in terms of developments regarding theory, methodology and applications, and general conclusions:

Pritchett. 1968. "Public Law and Judicial Behavior." *Journal of Politics* 30:480-509

Gibson. 1983. "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior."

Political Behavior 5:7-49

Shapiro. 1993. "Public Law and Judicial Politics." In *Political Science: The State of the Discipline II*, ed. Ada W. Finifter. Washington D.C.: American Political Science Association

Baum. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47:749-68

III Grading

Grading will be based on a 15 to 20-page research paper and presentation due the last day of classes (60%) and a final exam (20%). You are required to participate actively in each class discussion and to twice lead discussion and write a 3-5-page critical review or analysis of two or more of the assigned readings for any week of your own choice (20%). These mini-papers are due at the start of class when that week's readings are discussed. Take these papers seriously and use them as a foundation for your term paper.

Students are required to give a 10-15 minutes presentation of their research on the last day of classes. The empirical question you choose to address in your research paper will determine your data needs. However, you should be aware that several multiuser databases are now available for judicial research, including the U.S. Supreme Court Judicial Database and the newly created Courts of Appeals Judicial Database. Both are available at the Odum Institute. In addition, there is now available a multi-user dataset on state supreme courts that you can tap for your term paper. I strongly encourage you to use these datasets for your research papers. In the event that there are no secondary data to address your research question, you should gather your own data.

IV Class Schedule & Reading Assignments

1/13. **Judicial Review and Foundations of American Law**

Marbury v. Madison, 1 Cranch 137 (1803)
Segal and Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (hereafter SCAMR),
chs. 1 & 4
Graber, "The Problematic Establishment of Judicial Review" In *The Supreme Court in American
Politics*, Gillman and Clayton eds. Chapter 3.

1/20. Martin Luther King day. No class

1/27. **Models of Judicial Decision Making**

SCAMR, chs 2 & 3
Brigham, John. "The Constitution of the Supreme Court." In Gillman and Clayton, *The Supreme
Court in
American Politics*. Chapter 2.
McCann, Michael. "How the Supreme Court Matters in American Politics: New Institutional
Perspectives. In Gillman and Clayton, *The Supreme Court in American Politics*. Chapter
5.
Smith, Rogers. 1988. "Political Jurisprudence, the New Institutionalism, and the Future of Public
Law."
American Political Science Review 82:89-108

2/3. **Judicial Appointments, Policy Representations, and Retirements**

SCAMR, Chapter 5
Silverstein, "Bill Clinton's Excellent Adventure: Political Development and the Modern
Confirmation
Process." In Gillman and Clayton, *The Supreme Court in American Politics*. Chapter 8.
Overby et al. 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote on
Justice
Clarence Thomas" *American Political Science Review* (Hereafter APSR) 86:997-1003.
Marshall. 1993. "Symbolic versus Policy Representations on the U.S. Supreme Court. *Journal of
Politics* (hereafter JoP) 55:140-150
Moraski and Shipan 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional
Constraints and Choices. *AJPR* 43:1069-1095
Squire. 1988. "Politics and Personal Factors in Retirement from the United States Supreme
Court." 10 *Political Behavior* 10:180-190
Spriggs and Wahlbeck 1995. "Calling it Quits: Strategic Retirement on the Federal Courts of
Appeals, 1893-1991." *Political Research Quarterly* (Hereafter PRQ) 48:573-597

2/10. **Litigation Activities and Decision Making in Trial Courts**

Olson. 1990. "Interest Group Litigation in Federal District Courts: Beyond the Political
Disadvantage
Theory." *JoP* 52:854-82
Radelet and Pierce. 1985. "Race and Prosecutorial Decision Making in Homicide Cases" *Law and
Society
Review* 19:587-621

- Unah. 2003. "Explaining Corporate Litigation Activity in an Integrated Framework of Interest Mobilization." *Business and Politics*, forthcoming
- Epstein and Rowland. 1992. "Debunking the Myth of Interest Group Invincibility in the Courts." *APSR* 85: 205-17
- Gruhl, Spohn and Welch. 1981, "Women as Policymakers: The Case of Trial Judges" *AJPS* 25: 308-322.
- Welch, Combs, and Gruhl (1988) "Do Black Judges Make a Difference *AJPS* 32:

2/17. The United States Courts of Appeals in American politics

- Songer, Sheehan, and Haire. 2000. *Continuity and Change on the United States Courts of Appeals*. All.
- Unah 1997. "Specialized Courts of Appeals' Review of Bureaucratic Actions and the Politics of Protectionism." *PRQ* 50:851-78

2/24. Judicial Review of Agency Actions: Why, When, How?

- Scalia, Antonin. 1989. "Judicial Deference to Administrative Interpretations of Law." *Duke Law Journal* 1989:511-521
- McNollGast (McCubbins, Noll, and Weingast) 1987. "Administrative Procedures as Instruments of Political Control" *Journal of Law, Economics and Organization* (Hereafter *JLEO*) 3:243-277
- Spiller and Gely. 1992. "Congressional Control or Judicial Independence: The Determinants of U.S. Supreme Court Labor-Relations Decisions, 1948-1988." *Rand Journal of Economics* 23:463-92
- Hansen, Johnson, and Unah. 1995. "Specialized Courts, Administrative Agencies, and the Politics of U.S. Trade Policy." *AJPS* 39:529-57
- Sheehan 1992. "Federal Agencies and the Supreme Court: An Analysis of Litigation Outcomes, 1953-1988." *American Politics Quarterly* 20:478-500
- Silverstein 1994. "Statutory Interpretation and the Balance of Institutional Power" *Review of Politics* 56:475-501

Recommended

- Unah 1997. "Specialized Courts of Appeals' Review of Bureaucratic Actions and the Politics of Protectionism." *PRQ* 50:851-78
- Ferejohn and Weingast 1992. "Limitations of Statutes: Strategic Statutory Interpretation." *Georgetown Law Journal* 80:562-82
- Tanenhaus. 1960. "Supreme Court Attitudes Toward Federal Administrative Agencies." *JoP* 22:502-24

3/3. Agenda-Setting

- SCAMR ch. 6
- Caldeira and Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court" *APSR* 82:1109-
- McGuire and Caldeira. 1993. "Lawyers, Organized Interest, and the Law of Obscenity: Agenda Setting

in the Supreme Court." *APSR* 87:717-726
Boucher and Segal. 1995. "Supreme Court Justices as Strategic Decision Makers: Aggressive Grants and Defensive Denials in the Vinson Court" *JoP* 57:824-837.

Recommended

JLEO
Caldeira, Wright, and Zorn. 2000. "Strategic Voting and Gatekeeping in the Supreme Court."
McGuire and Palmer. 1995. "Issue Fluidity on the U.S. Supreme Court." *APSR* 89:691-702
Brenner and Krol. 1989 "Strategies in Certiorari Voting on the United States Supreme Court" *JoP* 51: 828
Brenner, Saul. 1979 "The New Certiorari Game" *JoP* 41: 649-
Choice Palmer. 1982. "An Econometric analysis of the U.S. Supreme Court's Certiorari Decisions." *Public* 39:387-

3/10 Spring Break (March 7-16)

3/17. **The Decision on the Merits: Legal, Attitudinal, Rational Choice, and Social Background Models**

SCAMR chs. 7 & 8.
Segal and Spaeth. 1996. The Influence of Stare Decisis on the Votes of U.S. Supreme Court Justices, *AJPS* 40: 971-1003.
Decision Brisbin.1996. Slaying the Dragon: Segal, Spaeth, and the Function of Law in Supreme Court Making." *AJPS* 40: 1004-15
Knight and Epstein. 1996. "The Norm of Stare Decisis." *AJPS* 40: 1018-35
Songer and Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *AJPS* 40: 1049-63
George and Epstein, On the Nature of Supreme Court Decision Making, 86 *APSR* 323 (1992).
Neal Tate and Roger Handberg: "Time Binding and Theory Building in Personal Attribute Models of the Supreme Court Voting Behavior" 35 *AJPS* 460 (1991)

3/24. **Internal Influences on Decision on the Merits: Role Perceptions**

Gibson. 1978. Judges' Role Orientations, Attitudes, and Decisions *APSR* 72:911
Gibson James. 1981. "Personality and Elite Political Behavior: The Influence of Self Esteem on Judicial Decision Making" *JoP* 43:104-25

External Influences on Decision on the Merits: Lawyers and Money

McGuire, Kevin. 1995. Repeat Players in the Supreme Court: The Role of Lawyers in Litigation Success." *Journal of Politics* 57:187-196
Making Haire, Lindquist, and Hartley. 1999. "Attorney Expertise, Litigant Success, and Judicial Decision in the U.S. Courts of Appeals." *Law and Society Review* 33:667-85
Sheehan, Mishler, and Songer. 1992. "Ideology, Status and the Differential Success Rate of

Direct Parties Before the U.S. Supreme Court." *APSR* 86: 464-71

3/31. **Institutional and Environmental Constraints**

Hierarchies

Baum. 1994. "Specialization and Authority Acceptance: The Supreme Court and Lower Federal Courts."

Political Research Quarterly 47:693-703

Supreme Songer, Cameron, Segal. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of

Court–Circuit Court Interactions." *AJPS* 38: 673-96

Model Cameron, Segal, and Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational

of the Supreme Court's Certiorari Decisions." *APSR* 94:101-116

Public Opinion

public "The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained confidence in its moral sanction." Justice Felix Frankfurter in *Baker v. Carr*

Readings:

Giles and Walker. 1975. "Judicial Policymaking and Southern School Segregation." *JoP* 37: 917-.

Mishler and Sheehan. 1993. "The Supreme Court as a Counter-Majoritarian Institution," *APSR* 87:87-101

Flemming and Wood. 1997. "The Public and the Supreme Court: Individual Justice Responsiveness to American Policy Moods." *AJPS* 41: 468- .

Hoekstra. 2000. The Supreme Court and Local Public Opinion. *APSR* 94:89-100

Recommended

Kulinski and Stanga. 1979. "Political Participation and Governmental Responsiveness" *APSR* 73: 1090-

Kilwein and Brisbin. 1997. "Policy Convergence in a Federal Judicial System." *AJPS* 41:122- .

Norpoth and Segal. 1994. "Popular Influence on Supreme Court Decisions," *APSR* 88: 711- ;

Mishler and Sheehan, Response, 88 *APSR* 716 (1994)

Mishler and Sheehan. 1996. "Public Opinion, the Attitudinal Model, and Supreme Court Decision Making," *JoP* 58: 169- .

Brace and Hall. 1990. "Neo-Institutionalism and Dissent in State Supreme Courts" *JoP* 52: 54-

4/7. **Separation of Powers**

Landes and Posner. 1975. "The Independent Judiciary in an Interest Group Perspective." *Journal of Law*

and Economics 18:875-901; Also read comments by Buchanan *JLE* 18: 903-5 and by Samuels *JLE* 18:907-11

Ferejohn and Shipan. 1990. "Congressional Influence on Bureaucracy" 6 *Journal of Law, Economics and Organizations* 6:1-27

Clinton. 1994. "Game Theory, Legal History, and the Origins of Judicial Review" *AJPS* 38: 285-.

Segal. 1997. "Separation-of-Powers Games in the Positive Theory of Congress and Courts" *APSR* 91: 28-44.

Recommended

Gelly and Spiller. 1990. "A Rational Choice Theory of Supreme Court Statutory Decisions" 6 *Journal of Law, Economics, and Organizations* 6:263-.

Meernick and Ignagni. 1997. "Judicial Review and Coordinate Construction of the Constitution."
AJPS 41:447-467.

Eskridge. 1991. "Reneging on History? Playing the Court/Congress/President Civil Rights
Game." *California Law Review* 79: 613-.

4/14. **Opinion Assignment and Coalitions**

Maltzman, Spriggs and Wahlbeck 2002. *Crafting Law on the Supreme Court: The Collegial Game*.
Read the entire text.
SCAMR: ch. 9

Opinion Impact

Partisan Gates, "The Supreme Court and Partisan Change: Contravening, Provoking and Diffusing
Conflict." In Gillman and Clayton, *The Supreme Court in American Politics*

United States Courts of Appeals." *JoP* 49:830-39
Songer. 1987. "The Impact of the Supreme Court on Trends in Economic Policy Making in the
United States Courts of Appeals." *JoP* 49:830-39

Adams. "Abortion: Evidence of an Issue Evolution." *AJPS* 41:718-737

Spriggs, "The Supreme Court and Federal Agencies: A Resource-Based Theory and Analysis of
Judicial Impact" 40 *AJPS* 1122 (1996).

Caldeira, Neither the Purse Nor the Sword. 80 *APSR* 1209 (1986).

Recommended

Gates,

Hoekstra and Segal, "The Shepharding of Local Public Opinion," 58 *JoP* 1079.

Caldeira, Neither the Purse Nor the Sword. 80 *APSR* 1209 (1986).

4/21. **Term Papers Due. Research Presentations**

TBA **FINAL EXAM**