

Judicial Politics

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Political Science 213
Monroe Hall B34
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Wednesday, 4:00-5:50

Purposes. This seminar has two basic purposes: to introduce graduate students to the literature in judicial process and behavior and to explore a series of particular topics, with emphasis on the major controversies within the broader subfield of law, courts, and judicial processes.

Readings. Most readings come from political science journals. I have ordered several optional books. If you are interested in building a library of books on judicial politics, these would be reasonable additions. The last book is a good resource for people interested in quantitative analysis of American politics.

Baum, Lawrence. 2007. *Supreme Court*. 9th ed. Washington: CQ Press.

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

Rosenberg, Gerald. 2008. *The Hollow Hope*. 2nd ed. Chicago: University of Chicago Press.

Epstein, Lee, Jeffrey A. Segal, Harold J. Spaeth, and Thomas G. Walker. 2007. *The Supreme Court Compendium: Data, Decisions, and Developments*. 4th Edition. Washington, D.C.: Congressional Quarterly.

Grades. I will base your grade on seminar participation (10%), two short critical essays (10% each), and a research paper (70%).

Since the success of any seminar depends on the participation of its members, your attendance and involvement in the class is essential. Part of your involvement will be to facilitate one class session during the semester. This means, more specifically, that you will prepare discussion questions for that class session. These questions should be given to me no later than 12:00 noon on the day of the class.

You will also be required to write two one-to-two page essays critically assessing a specific area of the literature. These essays should address issues like the contribution of one or more readings to the literature, the theoretical development of the reading, whether the methodology employed is appropriate to answering the question addressed in the

reading. You may focus on one or more of the readings. You may wish to utilize other articles to evaluate some facet of the required material. These essays must be received in class on the day that we discuss the readings in question.

Finally, you will write a research paper on a judicial politics topic of your choice. I believe that it is important for graduate students, especially doctoral students, to be able to conduct original research. This paper assignment is required in order to allow you to further develop your experience in research. As such, I expect you to write a paper that could be presented at a professional conference. We will discuss this assignment in more detail later this semester. However, there are a few deadlines that you should keep in mind: A paper proposal, describing your question, the basic hypotheses, and the evidence that you intend to use, is due on October 8; the paper will be due on December 10 (one week after the last class).

Course Outline/Readings. I reserve the right to make changes to this syllabus as the semester progresses.

Theories of Decision Making (September 10)

Elster, Jon. 1986. "Introduction." In *Rational Choice*, ed. Jon Elster. New York: New York University Press, 1-33.

March, James G., and Johan P. Olsen. 1984. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78 (September): 734-749.

Green, Donald P., and Ian Shapiro. 1994. *Pathologies of Rational Choice Theory: A Critique of Applications in Political Science*. New Haven: Yale University Press. Chapters 1-3.

Quattrone, George A., and Amos Tversky. 1988. "Contrasting Rational and Psychological Analyses of Political Choice." *American Political Science Review* 82 (September): 719-736.

Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47 (September): 749-768.

Preferences (September 17)

Druckman, James N., and Arthur Lupia. 2000. "Preference Formation." *Annual Review of Political Science* 3: 1-24.

Rohde, David W., and Harold J. Spaeth. 1976. *Supreme Court Decision Making*. San Francisco: W.H. Freeman. [Chapter 4: The Theory of Supreme Court Decision Making]

Braman, Eileen. 2006. "Reasoning on the Threshold: Testing the Separability of Preferences in Legal Decision Making." *Journal of Politics* 68 (May): 308-321.

Epstein, Lee, Valerie Hoekstra, Jeffrey A. Segal, and Harold J. Spaeth. 1998. "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices." *Journal of Politics* 60 (August): 801-818.

Songer, Donald R., Sue Davis, and Susan Haire. 1994. "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals." *Journal of Politics* 56 (May): 425-439.

Measuring Preferences (September 24)

Segal, Jeffrey A., and Albert Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83(June): 557-565.

[Updated in Segal, Jeffrey A., Lee Epstein, Charles M. Cameron, and Harold J. Spaeth. 1995. "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited." *Journal of Politics* 57 (August): 812-823.]

Lloyd, Randall D. 1995. "Separating Partisanship from Party in Judicial Research: Reapportionment in the U.S. District Courts." *American Political Science Review* 89 (June): 413-420.

Giles, Michael W., Virginia A. Hettinger, Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54 (September): 623-641.

Bailey, Michael A. 2007. "Comparable Preference Estimates across Time and Institutions for the Court, Congress, and the Presidency." *American Journal of Political Science* 51 (July): 433-448.

Johnson, Timothy R., Ryan C. Black, Jerry Goldman, Sarah A. Treul. N.d. "Inquiring Minds Want to Know: Do Justices Tip their Hands with Questions at Oral Argument in the U.S. Supreme Court?" *Washington University Journal of Law & Policy* Forthcoming.

Judicial Selection (October 1)

Moraski, Bryon J., and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science* 43 (October): 1069-1095.

Nemacheck, Christine L. 2006. *Strategic Selection: Presidential Selection of Supreme Court Justices from Hoover through Bush*. Charlottesville: University of Virginia Press. [Chapter 6: Strategic Selection: The Final Choice]

Primo, David M., Sarah A. Binder, and Forrest Maltzman. 2008. "Who Consents? Competing Pivots in Federal Judicial Selection." *American Journal of Political Science* 52 (July): 471-489.

Rohde, David W., and Kenneth A. Shepsle. 2007. "Advising and Consenting in the 60-Vote Senate: Strategic Appointments to the Supreme Court." *Journal of Politics* 69 (August): 664-677.

Krehbiel, Keith. 2007. "Supreme Court Appointments as a Move-the-Median Game." *American Journal of Political Science* 51 (April): 231-240.

Agenda-Setting (October 8)

Riker, William H. 1982. *Liberalism Against Populism*. Prospect Heights, IL: Waveland Press [Chapter 7: The Manipulation of Social Choices: Control of the Agenda]

Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82 (December): 1109-1127.

Cameron, Charles M., Jeffrey A. Segal, and Donald Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions." *American Political Science Review* 94 (March): 101-116.

Caldeira, Gregory A., John R. Wright, and Christopher J.W. Zorn. 1999. "Sophisticated Voting and Gate-keeping in the Supreme Court." *Journal of Law, Economics, and Organization* 15 (October): 549-572.

O'Brien, David M. 1997. "The Rehnquist Court's Shrinking Plenary Docket." *Judicature* 81 (September/October): 58-65.

The Law (October 15)

Knight, Jack, and Lee Epstein. 1996. "The Norm of *Stare Decisis*." *American Journal of Political Science* 40 (November): 1018-1035.

Braman, Eileen, and Thomas E. Nelson. 2007. "Mechanism of Motivated Reasoning? Analogical Perception in Discrimination Disputes." *American Journal of Political Science* 51 (October): 940-956.

Segal, Jeffrey. 1984. "Predicting Supreme Court Decisions Probabilistically: The Search and Seizure Cases." *American Political Science Review* 78 (December): 891-900.

Richards, Mark J., and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96 (June): 305-320.

Bueno de Mesquita, Ethan, and Matthew Stephenson. 2002. "Informative Precedent and Intrajudicial Communication." *American Political Science Review* 96 (December): 755-766.

Leadership (October 22)

Epstein, Lee, and Olga Shvetsova. 2002. "Heresthetical Maneuvering on the U.S. Supreme Court." *Journal of Theoretical Politics* 14 (1): 93-122.

Maltzman, Forrest, and Paul J. Wahlbeck. 2004. "A Conditional Model of Opinion Assignment on the Supreme Court." *Political Research Quarterly* 57 (December): 551-563.

Crowe, Justin. 2007. "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft." *Journal of Politics* 69 (February): 73-87.

Johnson, Timothy R., James F. Spriggs, II, and Paul J. Wahlbeck. 2005. "Passing and Strategic Voting on the U.S. Supreme Court." *Law & Society Review* 39 (June): 349-377.

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

The Collegial Game (October 29)

Black, Duncan. 1948. "On the Rationale of Group Decision-Making." *Journal of Political Economy* 56 (February): 23-34.

Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "Strategic Policy Considerations and Voting Fluidity on the Burger Court." *American Political Science Review* 90 (September): 581-592.

Anderson, Robert, IV, and Alexander M. Tahk. 2007. "Institutions and Equilibrium in the United States Supreme Court." *American Political Science Review* 101 (November): 811-825.

Lax, Jeffrey R. 2007. "Constructing Legal Rules on Appellate Courts." *American Political Science Review* 101 (August): 591-604.

Wahlbeck, Paul J., James F. Spriggs, II, and Forrest Maltzman. 1998. "Marshalling the Court: Bargaining and Accommodation on the U.S. Supreme Court." *American Journal of Political Science* 42 (January): 294-315.

The Separation of Powers Game (November 5)

Whittington, Keith E. 2005. "'Interpose Your Friendly Hand': Political Supports for the Exercise of Judicial Review by the United States Supreme Court." *American Political Science Review* 99 (November): 583-596.

Randazzo, Kirk A., Richard W. Waterman, and Jeffrey A. Fine. 2006. "Checking the Federal Courts: The Impact of Congressional Statutes on Judicial Behavior." *Journal of Politics* 68 (November): 1006-1017.

Toma, Eugenia Froedge. 1991. "Congressional Influence and the Supreme Court: The Budget as a Signaling Device." *Journal of Legal Studies* 20 (January): 131-146.

Segal, Jeffrey A. 1997. "Separation-of-Powers Games in the Positive Theory of Congress and Courts." *American Political Science Review* 91 (March): 28-44.

Bailey, Michael A., 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 (January): 72-85.

Public Opinion (November 12)

Caldeira, Gregory A. 1987. "Public Opinion and the U.S. Supreme Court: FDR's Court-Packing Plan." *American Political Science Review* 81 (December): 1139-1153.

Hoekstra, Valerie J. 2000. "The Supreme Court and Local Public Opinion." *American Political Science Review* 94 (March): 89-100.

Giles, Michael W., Bethany Blackstone, and Richard L. Vining, Jr. 2008. "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making." *Journal of Politics* 70 (April): 293-306.

Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92 (June): 343-358.

Staton, Jeffrey. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50 (January): 98-112.

Interest Groups, Lawyers, & Parties (November 19)

Austen-Smith, David. 1990. "Information Transmission in Debate." *Midwest Political Science Review* 34 (February): 124-152.

Hansford, Thomas G. 2004. "Information Provision, Organizational Constraints, and the Decision to Submit an Amicus Curiae Brief in a U.S. Supreme Court Case." *Political Research Quarterly* 57 (June): 219-230.

Johnson, Timothy R., 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 (February): 99-113.

Songer, Donald R., and Reginald S. Sheehan. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36 (February): 235-258.

Zorn, Christopher J.W. 2002. "U.S. Government Litigation Strategies in the Federal Appellate Courts." *Political Research Quarterly* 55 (March): 145-166.

Implementation (November 26)

Bendor, Jonathan, and Adam Meirowitz. 2004. "Spatial Models of Delegation." *American Political Science Review* 98 (May): 293-310.

Songer, Donald R., 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(August): 673-696.

Staton, Jeffrey K., and Georg Vanberg. 2008. "The Value of Vagueness: Delegation, Defiance, and Judicial Opinions." *American Journal of Political Science* 52 (July): 504-519.

Klein, David E., and Robert J. Hume. 2003. "Fear of Reversal as an Explanation of Lower Court Compliance." *Law & Society Review* 37(3): 579-606.

Last Class (December 3)

In-class presentation and discussion of research projects