

POLITICAL SCIENCE 673: LAW, POLITICS, AND SOCIETY
Department of Political Science • Stony Brook University
Fall 2007 • Wednesdays, 2:00-5:00 • SBS N-702

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Office hours: Open-door policy for graduate students

Note: I will post course materials and announcements on Blackboard.

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Welcome to *Law, Politics, and Society*. This class is one of two Ph.D. seminars in the judicial politics core. The other is POL 614 (American Judiciary), which covers the literature on judicial behavior and decision making. This class (673) is intended to cover some judicial politics topics related to law, politics, and society. In particular, we'll cover five big themes in the class: (1) general and classic conceptions of law and legal reasoning (both normative and empirical inquiries); (2) "judicialization" and rights expansion in the U.S. and beyond; (3) the dynamics and development of law and legal processes from both qualitative and quantitative perspectives; (4) the relationship between courts and society (including public perceptions and assessments of judicial institutions and implementation and impact of judicial and legal policies); and (5) trial courts and litigation.

REQUIRED BOOKS

1. Canon, Bradley, and Charles Johnson. 1999. *Judicial Policies: Implementation and Impact*. CQ Press.
2. Carter, Lief H., and Thomas F. Burke. 2007. *Reason in Law* (7th Edition). Pearson/Longman.
3. Epp, Charles R. 1998. *The Rights Revolution*. University of Chicago Press.
4. Hansford, Thomas G., and James F. Spriggs. 2006. *The Politics of Precedent on the U.S. Supreme Court*. Princeton University Press.
5. Kersch, Ken I. 2004. *Constructing Civil Liberties: Discontinuities in the Development of American Constitutional Law*. Cambridge University Press.
6. Rosenberg, Gerald R. 1991. *The Hollow Hope*. University of Chicago Press..
7. Shapiro, Martin, and Alec Stone Sweet. 2002. *On Law, Politics, and Judicialization*. Oxford University Press. [Available electronically from the library]

REQUIREMENTS

1. **Seminar participation (25%)**: I have very high expectations regarding seminar participation, which is a core component of the entire course. Participation is what makes a seminar a seminar! I expect students to come to class having carefully read and carefully thought about the assigned readings. Students should be prepared to engage in discussions of the readings. In the event of a lack of participation, I will call on students to discuss and critique the readings in order to stimulate a discussion.

Regarding participation in general, I encourage students to take risks with their class comments. Don't hold back from participating because you think your comments may sound "dumb." Take a chance and say what's on your mind (as long as it relates to class, of course!). Each and every student's input and impressions are worthy of class discussion.

Also, oftentimes the knee-jerk reaction in seminars is to offer negative commentary about the readings. While we can certainly spend time offering critical commentary of the theoretical and empirical components of the work, let's try hard to acknowledge explicitly the positive aspects of the research as well. Remember, the research we'll read has been published, meaning that the people who decided to publish the work thought it had significant intellectual merit.

2. **Reaction papers** (20%): Before each class, each student will write a short paper in response to the readings for the week. The length of the papers should be between 2 to 3 pages (single-spaced), and they can be very informal, including bullet points of your thoughts on the readings. The papers should include four central components: (1) some general summary observations of each reading; (2) positive impressions about the theoretical and empirical contributions; (3) critical impressions of the theoretical and empirical components, including what you would have done differently; and (4) some questions for class discussion and some research questions that you thought about in response to the work.
3. **Seminar leader** (10%): Each student will choose one of the classes (there are 12 total) throughout the semester and be the "seminar leader" for that class. The basic requirements of the seminar leader include: (1) offering a very brief overview of the readings (remember, all of us will have already read the material); (2) suggesting both positive impressions and critical impressions of the theory, research design, and empirical findings; and (3) posing questions and leading seminar discussion for the first half of class.
4. **Final paper** (45%): Each student is required to submit a final paper. Students have two options for this paper.

Option 1: A full-fledged research paper reporting the results of original research. The paper should be written as if it were to be given at a professional conference. It should include a clear explication of the importance of the research question, a characterization of the literature related to the research question, a theoretical framework, a clear explanation of the research design, and an empirical examination of the hypotheses (either quantitative or qualitative) and a discussion of the results. I strongly encourage students to choose this option.

Option 2: A review paper that chooses a theme or topic from class and offers a critical assessment and commentary of the literature on that topic. The paper should go beyond a mere "lit review" and should attempt to offer original arguments and contributions. It could resemble a review piece one might see in the *Annual Review of Political Science* or the "field essays" that used to appear in *Political Research*

Quarterly. Such a paper can offer an assessment on what has been done on the topic (what have we learned? what do we know?), suggest holes in the literature of the both the theoretical and empirical varieties (what don't we know?), offer suggestions on what remains to be done, what new approaches could be taken to advance knowledge on the topic, outline a new theoretical or empirical framework for analyzing questions in the field, etc.

For both paper options, the following benchmarks must be met throughout the semester:

1. Wed., 10/3 (Week 5): Preliminary proposal of your research topic (similar to a conference proposal).
2. Wed., 11/14 (Week 11): A (roughly) 2-page (single-spaced) summary outlining your paper. For the research paper (option 1), this should include a rough outline of your theory, hypotheses, a description of the data you will use, research design and a general sense of what your empirical analysis will look like. For the review paper (option 2), this should include a general outline of the research you will assess and an outline of some of the arguments you will make.
3. Wed., 12/12 (Week 15): Preliminary version of the paper is due. Class members should send the paper to everyone in class. I'll assign discussants for each paper.
4. Finals week (Mon., 12/17): Mini conference. Each student will give a short presentation of their paper. Each student will be a discussant for a paper. Students should read each paper.
5. Thurs., 12/20: FINAL PAPER DUE

ACADEMIC HONESTY

Each student must pursue his or her academic goals honestly and be personally accountable for all submitted work. Representing another person's work as your own is always wrong. Any suspected instance of academic dishonesty will be reported to the Academic Judiciary. For more comprehensive information on academic integrity, including categories of academic dishonesty, please refer to the academic judiciary website at: <http://www.stonybrook.edu/uaa/academicjudiciary/>

COURSE SCHEDULE

(Note: Optional readings are marked with *)

Week 1 (Wed, 9/5): *Course Introduction*

I. LAW AND LEGAL REASONING

Week 2 (Wed, 9/12): *Conceptions of Law and Legal Reasoning*

Carter and Burke (2007), all

Tiller, Emerson, and Frank B. Cross. 2006. "What is Legal Doctrine?" *Northwestern University Law Review* 100:517-33.

- Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4:261-76.
- Braman, Eileen, and Thomas E. Nelson. 2007. "Mechanisms of Motivated Reasoning? Analogical Perception in Discrimination Disputes." *American Journal of Political Science* 51:940-56.
- *Braman, Eileen. 2006. "Reasoning on the Threshold: Testing the Separability of Preferences in Legal Decision Making." *Journal of Politics* 68:308-21.

II. JUDICIALIZATION AND RIGHTS EXPANSION AROUND THE WORLD

Week 3 (Wed, 9/19): *Law, Politics, and Judicialization*

Shapiro and Sweet (2002)

Week 4 (Wed, 9/26): *The Rights Revolution*

Epp (1998)

III. THE DYNAMICS AND DEVELOPMENT OF LAW AND LEGAL PROCESSES

Week 5 (Wed, 10/3): *Path Dependence, Structural Breaks, and the Law*

Pierson, Paul. 2000. "Increasing Returns, Path Dependence, and the Study of Politics." *American Political Science Review* 94:251-67.

*Page, Scott E. "Path Dependence." *Quarterly Journal of Political Science* 1:87-115.

Hathaway, Oona A. 2001. "Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System." *Iowa Law Review* 86:601-65.

Lipkin, Robert Justin. 2000. *Constitutional Revolutions*. Duke University Press. Chapters 3-5.

Gennaioli, Nicola, and Andrei Shleifer. 2007. "The Evolution of Common Law." *Journal of Political Economy* 115:43-68.

Week 6 (Wed, 10/10): *Historical Institutionalism and American Political Development Perspectives on Legal Change*

Kersch (2004)

Gillman, Howard. 2004. "Martin Shapiro and the Movement from 'Old' to 'New' Institutional Studies in Public Law Scholarship." *Annual Review of Political Science* 7:363-82.

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* 99:583-96.

Keck, Thomas M. 2007. "Party, Policy, or Duty: Why Does the Supreme Court Invalidate Federal Statutes?" *American Political Science Review* 101:321-38.

*Pickerell, J. Mitchell, and Cornell W. Clayton. 2004. "The Rehnquist Court and the Political Dynamics of Federalism." *Perspectives on Politics* 2:233-48.

Week 7 (Wed, 10/17): *The Supreme Court's Treatment of Precedent Over Time*

Hansford and Spriggs (2006), all

Week 8 (Wed, 10/24): *Dynamics of Legal Policy on the Supreme Court*

Pacelle, Richard L., Jr. 1995. "The Dynamics and Determinants of Agenda Change in the Rehnquist Court." In *Contemplating Courts*, Lee Epstein, ed. CQ Press.

Pacelle, Richard L., Jr. N.d. "The Emergence and Evolution of Supreme Court Policy." In *Exploring Judicial Politics* (Forthcoming), ed. Mark Miller. Oxford University Press.

Pacelle, Richard L., Jr. 2004. "A *Mapp* to Legal Change and Policy Retreat: *United States v. Leon*." In *Creating Constitutional Change*, Gregg Ivers and Kevin McGuire, eds. Charlottesville: University Press of Virginia.

Chemerinsky, Erwin. *Constitutional Law: Principles and Policies*. Aspen. pp. 783-813 (on the legal developments pertaining to the constitutional right to an abortion).

IV. THE RELATIONSHIP BETWEEN COURTS AND SOCIETY

Week 9 (Wed, 10/31): *Public Opinion and the Supreme Court I: Legitimacy and the Bases of Support for the Supreme Court*

Casey, Gregory. 1974. "The Supreme Court and Myth: An Empirical Investigation." *Law & Society Review* 8:385-419.

Caldeira, Gregory A. 1986. "Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court." *American Political Science Review* 80:1209-26.

Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36:635-64.

*Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92:343-58.

Gibson, James L., Gregory A. Caldeira, and Lester K. Spence. 2003. "The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33:535-56.

Gibson, James L., Gregory A. Caldeira, and Lester K. Spence. 2003. "Measuring Attitudes Toward the United States Supreme Court." *American Journal of Political Science* 47:354-67.

Mondak, Jeffrey J. 1993. "Institutional Legitimacy and Procedural Justice: Reexamining the Question of Causality." *Law and Society Review* 27:599-608.

Durr, Robert H., Andrew D. Martin, and Christina Wolbrecht. 2000. "Ideological Divergence and Public Support for the Supreme Court." *American Journal of Political Science* 44:768-76.

*Grosskopf, Anke, and Jeffrey J. Mondak. 1998. "Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court." *Political Research Quarterly* 51:633-54.

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

Baird, Vanessa A., and Amy Gangl. 2006. "Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness." *Political Psychology* 27:597-614.

Week 10 (Wed, 11/7): *Public Opinion and the Supreme Court II: The Supreme Court's Impact on Public Opinion*

Murphy, Walter F., and Joseph Tanenhaus. 1968. "Public Opinion and the United States Supreme Court: Mapping of Some Prerequisites for Court Legitimation of Regime Changes." *Law & Society Review* 2:357-84.

Mondak, Jeffery J. 1990. "Perceived Legitimacy of Supreme Court Decisions: Three Functions of Source Credibility." *Political Behavior* 12:363-84.

Mondak, Jeffery J. 1992. "Institutional Legitimacy, Policy Legitimacy, and the Supreme Court." *American Politics Quarterly* 20:457-77.

*Mondak, Jeffery J. 1994. "Policy Legitimacy and the Supreme Court: The Sources and Contexts of Legitimation." *Political Research Quarterly* 47:675-92.

Clawson, Rosalee A., and Eric N. Waltenburg. 2001. "The Legitimacy-Confering Authority of the U.S. Supreme Court: An Experimental Design." *American Politics Research* 29:566-91.

*Clawson, Rosalee A., and Eric N. Waltenburg. 2003. "Support for a Supreme Court Affirmative Action Decision: A Story in Black and White." *American Politics Research* 31:251-79.

*Clawson, Rosalee A., Elizabeth R. Kegler, and Eric N. Waltenburg. 2003. "Supreme Court Legitimacy and Group-Centric Forces: Black Support for Capital Punishment and Affirmative Action." *Political Behavior* 25:289-311.

Hoekstra, Valerie J. 1995. "The Supreme Court and Opinion Change: An Experimental Study of the Court's Ability to Change Opinion." *American Politics Quarterly* 23:109-29.

Hoekstra, Valerie J., and Jeffrey A. Segal. 1996. "The Shepherding of Local Public Opinion." *Journal of Politics* 58:1079-1102.

Marshall, Thomas. 1987. "The Supreme Court as an Opinion Leader: Court Decisions and the Mass Public." *American Politics Quarterly* 15:147-68.

Franklin, Charles H., and Liane C. Kosaki. 1989. "Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion." *American Political Science Review* 83:751-71.

Johnson, Timothy, and Andrew D. Martin. 1998. "The Public's Conditional Response to Supreme Court Decisions." *American Political Science Review* 92:299-309.

Week 11 (Wed, 11/14): *Implementation and Impact of Judicial Policies I*

Canon and Johnson (1999), all

Bond, Jon R., and Charles A. Johnson. 1982. "Implementing a Permissive Policy: Hospital Services after Roe v. Wade." *American Journal of Political Science* 26:1-24.

Week 12 (Wed, 11/21): *Implementation and Impact of Judicial Policies II*

Rosenberg (1991)

Flemming, Roy B., John Bohte, and B. Dan Wood. 1997. "One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947-92." *American Journal of Political Science* 41:1224-50.

V. LITIGATION AND TRIAL COURTS

Week 13 (Wed, 11/28): *Varieties of Bias Associated with Litigation Outcomes and Trial Courts*

Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9:95-160.

Pennington, Nancy, and Reid Hastie. 1992. "Explaining the Evidence: Tests of the Story Model for Juror Decision-Making." *Journal of Personality and Social Psychology* 62:189-206.

Landsman, Stephan, and Richard F. Rakos. 1994. "A Preliminary Inquiry into the Effect of Potentially Biasing Information on Judges and Jurors in Civil Litigation." *Behavioral Sciences and the Law* 12:113-26.

Kuhn, Deanna, Michael Weinstock, and Robin Flaton. 1994. "How Well Do Jurors Reason? Competence Dimensions of Individual Variation in a Juror Reasoning Task." *Psychological Science* 5:289-96.

Huber, Gregory A., and Sanford C. Gordon. 2004. "Accountability and Coercion: Is Justice Blind When it Runs for Office." *American Journal of Political Science* 48:247-63.

Week 14 (Wed, 12/5): *Work on papers – NO CLASS*

Week 15 (Wed, 12/12): *PRELIMINARY VERSIONS OF PAPER DUE – Seminar Wrap-Up*

FINALS WEEK (Mon, 12/17): *Mini Conference: Presentation and Discussion of Papers*

Final paper due Thursday, Dec. 20.