

## **POLS 8430: Judicial Politics**

Professor Christina Boyd

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Office Hours: Wed 4:30-6:00 and by appointment (please email)

Spring 2017; Wednesday 6:50-9:50

### **Course Description:**

This course examines courts in the American political system, the selection of judges, the flow of decisions through trial and appellate courts, the participation of non-judicial actors, the considerations of judicial decision making, and the relations between courts and other government institutions.

### **Grading:**

30% - Participation

20% - 2 Critical Paper Reviews

40% - Research Paper

5% - Research Paper Proposal

5% - Research Paper Presentation

Your **participation** will be evaluated on a number of components, including your regular attendance, your thoughtful and prepared participation during seminars, your attendance at required event(s), and your performance as a discussion leader. Most substantive classes will have one or more assigned discussion leaders. Your jobs in this role will be to carefully read the assigned readings, prepare discussion questions, think critically about how the work fits together (or doesn't), discuss the question(s) that are being tackled by the research, crystallize what is learned from the research (either through summary or through questions), critique the authors' theory, research design, evidence, methodology and/or conclusions, and propose remaining questions or new avenues for research in the area. Every class will proceed differently, so be flexible and always be prepared (whether you are the discussion leader or not). Discussion leaders are not responsible for readings marked "skim" or "recommended background."

The **two critical paper reviews** will require you to read and write a critical yet constructive review on a judicial politics-related manuscript being submitted to a peer-review journal. Further instructions will be provided with the first assignment.

Each student is required to write an **original research paper** that empirically, formally, or otherwise systematically analyzes a topic (loosely) connected to this course. To do this, you need to develop a testable research question, find or collect data relevant to that topic, analyze those data, and write up and present those findings to the class. The level of required data collection and analysis can vary based on your field of study and level in the program. Paper proposals are due in class, after which we'll talk more in person about your project and ideas for successfully moving forward. At the end of the semester, you will present your research project and any findings to the class.

**Unless otherwise noted, assignments turned in late will lose 10 points per day (with the "day" clock beginning as soon as class begins).**

**At the end of this course, students should be equipped to:**

- Identify the key legal institutions and actors in the United States.
- Evaluate how political and strategic factors affect presidential and senatorial decisions in the nomination and confirmation of federal judges.
- Assess how different judicial selection systems in U.S. states affect which judges serve and what decisions those judges make on the bench.
- Describe, assess, and critique the primary legal and political theories used to examine and explain judicial behavior and votes.
- Identify how judges and justices account for hierarchical, public opinion, and legitimacy considerations when making decisions.
- Comprehend how foreign and international courts and judicial decision making considerations differ from those in the U.S.
- Access, interpret, and critically analyze U.S. Supreme Court data from 1791 to the present, U.S. state supreme court data from 1995-2010, and other important judicial data sources.

**Required books [order online; not in campus bookstore]:**

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.

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

Hettinger, Virginia A., Stefanie A. Lindquist, and Wendy L. Martinek. 2006. *Judging on a Collegial Court*. University of Virginia Press.

*Other course readings are available online (via J-STOR, google scholar, HeinOnline, etc) or eLC.*

**Schedule:** Schedule is approximate; assignments may be adjusted during the course of the semester depending on our pace in class. **Special Note:** All assigned reading is to be conducted prior to the class for which it is listed.

**1/11– Course Introduction; Introduction to the Judiciary and Judicial Politics**

- No reading

**1/18 – Accessing Courts**

- Miller, Richard E., and Austin Sarat. 1980–81. “Grievances, Claims, and Disputes: Assessing the Adversary Culture.” *Law & Society Review* 15(3):525-566.
- Boyd, Christina L. 2015. “Litigant Status and Trial Court Appeal Mobilization.” *Law & Policy* 37(4):294-323. [skim]
- Rowland, C.K. and Bridget Todd. 1991. Where You Stand Depends on Who Sits: Platform Promises and Judicial Gatekeeping in the Federal District Courts. *Journal of Politics* 53: 175.

- Giles, Micheal W., Virginia Hettinger, Christopher Zorn, and Todd Peppers. 2007. “The Etiology of the Occurrence of En Banc in the U.S. Court of Appeals.” *American Journal of Political Science* 51:449-463.
- Caldeira, Gregory A. and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82: 1109.
- Boucher, Jr., Robert L. 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.
- Black, Ryan C. and Ryan J. Owens. 2009. “Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence.” *Journal of Politics* 71(3):1062–1075.
- *Recommended Background*: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapter 6]

Discussion leaders: \_\_\_\_\_

### **1/25 - Judicial Selection, Retention, and Departures: Federal**

- Binder, Sarah A. and Forrest Maltzman. 2002. "Senatorial Delay in Confirming Federal Judges, 1947-1998." *American Journal of Political Science* 46: 190.
- Epstein, Lee, Rene Lindstadt, Jeffrey A. Segal and Chad Westerland. 2006. “The Changing Dynamics of Senate Voting on Supreme Court Nominees.” *Journal of Politics* 68:296–307.
- Susan Navarro Smelcer, Amy Steigerwalt, and Richard L. Vining, Jr. 2012. “Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees.” *Political Research Quarterly*. 65: 827-840.
- Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle. 2002. “To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998.” *Journal of Politics* 64:337-361.
- Giles, Micheal V. Hettinger, and T. Peppers. 2001. “Picking Federal Judges: A Note on Policy and Partisan Selection Agendas.” *Political Research Quarterly* 54: 623-641.
- Boyd, Christina L., Michael S. Lynch, and Anthony J. Madonna. 2015. “Nuclear Fallout: Investigating the Effect of Senate Procedural Reform on Judicial Nominations.” *The Forum* 13(4): 623-641. [skim]
- Yoon, Albert. 2006. “Pensions, Politics, and Judicial Tenure: An Empirical Study of Federal Judges, 1869–2002.” *American Law and Economics Review* 8(1):143-80.
- *Recommended Background*: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapter 5]

Discussion leaders: \_\_\_\_\_

### **2/1 – Judicial Selection, Retention, and Departures: States**

- American Judicature Society Center for Judicial Ethics 20<sup>th</sup> National College on Judicial Conduct and Ethics Transcript. 2007. “Judicial Independence, Judicial Selection, and the First Amendment in the post-*White* era.” *Judicature* 91(3):135-143. (Get on HeinOnline) [skim]

- Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95: 315.
- 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.
- Brace, Paul and Brent D. Boyea. 2008. "State Public Opinion, the Death Penalty, and the Practice of Electing Judges." *American Journal of Political Science* 52(2):360–372.
- Gibson, James L. 2008. "Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and New-Style Judicial Campaigns." *American Political Science Review* 102(1):59–75.
- Bonneau, Chris W. and Damon M. Cann. 2011. "Campaign Spending, Diminishing Marginal Returns, and Campaign Finance Restrictions in Judicial Elections." *Journal of Politics* 73(4):1267–1280.
- Curry, Todd A. and Mark S. Hurwitz. 2016. "Strategic Retirements of Elected and Appointed Justices: A Hazard Model Approach." *Journal of Politics* 78: 1061-1075.

Discussion leaders: \_\_\_\_\_

### **2/8 –Judicial Decision Making I**

- Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4: 261-76.
- Bailey, Michael A. and Forrest Maltzman. 2008. "Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court." *American Political Science Review* 102(3): 369-384.
- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapters 2, 3, 7, 8]
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press. [All, emphasis on chapter 1]
- George, Tracey E. and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86(2):323-337.
- P. Brace and M.G. Hall. 1997. "The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice." *Journal of Politics* 59: 1206-1231.

Discussion leaders: \_\_\_\_\_

### **2/15 –Judicial Decision Making II**

- Gibson, James L. 1978. "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model." *American Political Science Review* 72: 911-924.
- Taha, Ahmed E. 2004. "Publish or Paris? Evidence of How Judges Allocate Their Time." *American Law and Economics Review* 6:1-27.
- Boyd, Christina L. Lee Epstein, and Andrew D. Martin. 2010. "Untangling the Causal Effects of Sex on Judging." *American Journal of Political Science* 54:389-411.
- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57:167-183.
- Glenn, Adam N. and Maya Sen. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science* 59: 37-54.

Discussion leaders: \_\_\_\_\_

**[Manuscript Review due at the beginning of class on 2/15]**

**[1-2 paragraph research paper proposal due in class (printed) on 2/15; we'll discuss feasibility and plans in class]**

### **2/22 – Measures and Data Sources**

- Segal, Jeffrey A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83:557-565.
- Martin, Andrew D. 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. [skim methodology; discussion required of rest]
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics & Organization*, 23(2):303–325.
- Bailey, Michael. 2007. "Comparable Preference Estimates across Time and Institutions for the Court, Congress, and Presidency." *American Journal of Political Science*, 51: 433-448.
- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. "Measuring the Preferences of State Supreme Court Judges." *Journal of Politics* 62:387-413. [skim methodology; discussion required of rest]
- Windett, Jason H., Jeffrey J. Harden, and Matthew E.K. Hall. 2015. "Estimating Dynamic Ideal Points for State Supreme Courts." *Political Analysis* 23: 461-469. [skim methodology; discussion required of rest]
- Hall, Matthew E. K. and Jason Harold Windett. 2013. "New Data on State Supreme Court Cases." *State Politics & Policy Quarterly* 13:427-445.
- USSC Database Handout on eLC (no discussion required)

Discussion leaders: \_\_\_\_\_

### **3/1 – No Class (Spring Break)**

### **3/8 – Hierarchical Constraints and Considerations for Judging**

- Randazzo, Kirk A. 2008. "Strategic Anticipation and the Hierarchy of Justice in the U.S. District Courts." *American Politics Research* 36:669-693.
- Schanzenbach, Max M. and Emerson H. Tiller. 2007. "Strategic Judging Under the U.S. Sentencing Guidelines: Positive Political Theory and Evidence." *Journal of Law, Economics, & Organization*. 23(1):24-56.
- 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: 673.
- Hettinger, Virginia., Stefanie Lindquist, and Wendy Martinek. 2006. *Judging on a Collegial Court*. University of Virginia Press. [skip chapter 3]

- Benesh, Sara C. and Malia Reddick. 2002. "Overruled: An Event History Analysis of Lower Court Reaction to Supreme Court Alteration of Precedent." *Journal of Politics* 64: 534.
- Klein, David E. and Robert J. Hume. 2003. "Fear of Reversal as an Explanation of Lower Court Compliance." *Law & Society Review* 37:579-581.
- Corley, Pamela C., Paul M. Collins and Bryan Calvin. 2011. "Lower Court Influence on U.S. Supreme Court Opinion Content." *Journal of Politics* 73(1):31-44. [skim]

Discussion leaders: \_\_\_\_\_

### **3/15 -- External Constraints on Judging – Public Opinion/Legitimacy**

- Mishler, William and R. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87: 87-101.
- Benesh, Sara. 2006. "Understanding Public Confidence in American Courts." *Journal of Politics* 68: 697-707.
- Gibson, James L. and Gregory A. Caldeira. 2009. "Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53: 139-155.
- Christenson, Dino P. and David M. Glick. 2014. "Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy." *American Journal of Political Science* 59:403-418.
- Robert J. Hume. 2012. "State Courts and Policy Legitimation: An Experimental Study of the Ability of State Courts to Change Opinion" *Publius*. 42: 211-233.
- Casillas, Christopher J., Peter K. Enns and Patrick C. Wohlfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55(1):74-88.

Discussion leaders: \_\_\_\_\_

### **3/22 --External Constraints on Judging – Congress, Presidency, and Responsiveness**

- Dahl, Robert A. 1957. "Decision Making in a Democracy: The Supreme Court as a National Policy Maker." *Journal of Public Law* 6: 279.
- Epstein, Lee, Jack Knight, and Andrew D. Martin. 2001. "The Supreme Court as a Strategic National Policy Maker." *Emory Law Journal* 50: 583.
- Review Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press [Chapter 5].
- Segal, Jeffrey. 1997. "Separation-of-Powers Games in the Positive Theory of Congress and Courts." *American Political Science Review* 91: 28-44. (and correction at 92:923-926).
- Kuklinski, James H. and John E. Stanga. 1979. "Political Participation and Government Responsiveness: The Behavior of the California Superior Courts." *American Political Science Review* 73: 1090.

Discussion leaders: \_\_\_\_\_

### **3/29 – Lawyers and Amicus**

- Galanter, Marc. 1974. “Why the ‘Haves’ Come out Ahead: Speculation on the Limits of Legal Changes,” *Law & Society Review* 9: 95–160. [skim]
- McGuire, Kevin T. 1995. “Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success,” *Journal of Politics* 57: 187–96.
- Black, Ryan C. and Ryan J. Owens. 2013. “A Built-In Advantage: The Office of the Solicitor General and the U.S. Supreme Court.” *Political Research Quarterly* 66: 454–66.
- Bailey, Michael A., Brian Kamoie and Forrest Maltzman. 2004. “Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making.” *American Journal of Political Science* 49(1):72–85.
- 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: 99-113.
- Collins, Jr., Paul. 2004. “Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation.” *Law & Society Review* 38: 807-832.
- *Review*: Caldeira, Gregory A. and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82: 1109.

Discussion leaders: \_\_\_\_\_

**[Manuscript Review due on 3/29 at start of class]**

**4/5-No Class (MPSA); Make progress on your research papers!**

### **4/12 -- Comparative and International Courts, Part I**

- Flemming, R. and G. Krutz. 2002. “Selecting Appeals for Judicial Review in Canada: A Replication and Multivariate Test of American Hypotheses.” *Journal of Politics* 64: 232-248.
- Ramseyer, J.M. and E. Rasmusen. 2001. “Why Are Japanese Judges So Conservative in Politically Charged Cases?” *American Political Science Review* 95: 331-344.
- Carrubba, Clifford J., Matthew Gabel and Charles Hankla. 2008. “Judicial Behavior under Political Constraints: Evidence from the European Court of Justice.” *American Political Science Review* 102(4):435-452.
- Powell, Emilia Justyna and Sara McLaughlin Mitchell. 2007. “The International Court of Justice and the World’s Three Legal Systems.” *Journal of Politics* 69(2):397-415.
- Diana Kapiszewski and Matthew M Taylor. 2008. “Doing Courts Justice? Studying Judicial Politics in Latin America.” *Perspectives on Politics* 6(4):741–767.
- Tiede, Lydia B. 2016. “The Political Determinants of Judicial Dissent: Evidence from the Chilean Constitutional Tribunal.” *European Political Science Review* 8:377-403.

Discussion leaders: \_\_\_\_\_

#### **4/19 – Comparative and International Courts, Part II**

- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96: 291.
- Gibson, James L, Gregory A. Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92: 343
- Herron, Erik S. and Kirk A. Randazzo. 2003. "The Relationship between Independence and Judicial Review in Post-Communist Courts." *Journal of Politics* 65(2):422–438.
- Rios-Figueroa, Julio and Jeffrey K. Staton. 2014. "An Evaluation of Cross-National Measures of Judicial Independence." *Journal of Law, Economics, and Organization* 30:104-137.
- Baird, Vanessa A. and Debra Javeline. 2010. "The Effects of National and Local Funding on Judicial Performance: Perceptions of Russia's Lawyers." *Law and Society Review*. 44: 331-364.

Discussion leaders: \_\_\_\_\_

#### **4/26 – Research Presentations in Class**

**5/1 – 10:00 a.m. Final paper due (submit via email)**