

POLS 8430: Judicial Politics
Spring 2019
Baldwin Hall Rm 104; Tuesdays 3:30pm-6:15pm

Professor Christina Boyd
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Office: Baldwin Hall, 380E
Office Hours: Tuesdays 2:00-3:00pm and by appointment

Course Description:

This course examines courts and judges 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:

20% Participation
20% 2 Critical Paper Reviews
35% Research Paper (and Proposal)
5% Research Paper Presentation
15% Midterm Exam
5% Syllabus Creation Assignment

Your **participation** will be evaluated on a number of components, including your regular attendance, your thoughtful and prepared participation during seminars, 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). Unless otherwise noted in class, 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 peer review on a judicial politics-related manuscript being submitted to a peer-review journal. Further instructions and examples 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 in a conference-style presentation.

Students will take an open book, open note (no collaboration), essay-style **midterm comprehensive exam** derived from the body of material in the course up until the exam. Further details will be distributed later in the semester.

Students will also be tasked with designing their own **syllabus** for an undergraduate judicial politics course. This fun and practical task will require thoughtfulness in organizing appropriate course material, planning class activities and assessment, and selecting a textbook and/or external readings. More details on this assignment will be provided during the semester.

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.

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.

1/15– Course Introduction; Introduction to the Judiciary and Judicial Politics

- No reading

1/22 – 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.
- Boldt, Ethan D. and Christina L. Boyd. 2018. “The Political Responsiveness of Violent Crime Prosecution.” *Political Research Quarterly* 71(4): 936-948.

- 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.
- *Background Reading*: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapter 6]

Discussion leaders: _____

1/29 - Judicial Selection and Departures

- 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.
- 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.
- Black, Ryan C. and Ryan J. Owens. 2016. "Courting the President: How Circuit Court Judges Alter Their Behavior for Promotion to the Supreme Court." *AJPS* 60: 30-43.
- 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.
- 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.
- 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.
- *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: _____

2/5 –Judicial Decision Making I

- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapters 2, 3, 7, 8]
- George, Tracey E. and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86(2):323-337.
- Gibson, James L. 1978. "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model." *American Political Science Review* 72: 911-924.

- Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47 (September): 749-768.
- 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.
- Richards, Mark J., and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96 (June): 305-320.
 - Skim these articles to understand the debate following the Richards and Kritzer article
 - Lax, Jeffrey R., and Kelly R. Rader. 2010. "Legal Constraints on Supreme Court Decision Making: Do Jurisprudential Regimes Exist?" *Journal of Politics* 71:273-84.
 - Kritzer, Herbert M., and Mark J. Richards. 2010. "Taking and Testing Jurisprudential Regimes Seriously: A Response to Lax and Rader." *Journal of Politics* 72:285-88.
 - Lax, Jeffrey R., and Kelly R. Rader. 2010. "The Three Prongs of a Jurisprudential Regimes Test: A Response to Kritzer and Richards." *Journal of Politics* 72:289-91

Discussion leaders: _____

2/12 Judicial Decision Making II

- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press. [Read all, emphasis on chapter 1]
- Dahl, Robert A. 1957. "Decision Making in a Democracy: The Supreme Court as a National Policy Maker." *Journal of Public Law* 6: 279. [skim]
- Epstein, Lee, Jack Knight, and Andrew D. Martin. 2001. "The Supreme Court as a Strategic National Policy Maker." *Emory Law Journal* 50: 583.
- 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.
- Nelson, Michael J. 2014. "Responsive Justice? Retention Elections, Prosecutors, and Public Opinion." *Journal of Law and Courts* [skim]
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33(4):535-556.

2/19 – 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: _____

[Manuscript Review due at the beginning of class on 2/19]

2/26 – Eclectic Judicial Behavior

- 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.
- 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.
- 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.
- Taha, Ahmed E. 2004. “Publish or Paris? Evidence of How Judges Allocate Their Time.” *American Law and Economics Review* 6:1-27.

2-3 additional readings TBA

Discussion leaders: _____

[1-2 paragraph research paper proposal due in class (printed) on 2/26; we’ll discuss feasibility and plans in class]

3/5 – In Class Midterm

3/12 – No Class (Spring Break)

3/19-Trial Courts

- Priest, George L. and Benjamin Klein. 1984. "The Selection of Disputes for Litigation." *Journal of Legal Studies* 13: 1.
- Giles, Micheal W. and Thomas G. Walker. 1975. "Judicial Policy-Making and Southern School Segregation." *Journal of Politics* 37: 917-936.
- Choi, Stephen J., Mitu Gulati, and Eric A. Posner. 2012. "What Do Federal District Judges Want? An Analysis of Publications, Citations, and Reversals." *Journal of Law, Economics, and Organization*. 28(3) 518-549.
- Boyd, Christina L. 2013. "She'll Settle It?" *Journal of Law and Courts* 1:193-219.
- Boyd, Christina L. and David A. Hoffman. 2013. "Litigating Toward Settlement." *Journal of Law, Economics, & Organization* 29:898-929.
- 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.
- Galanter, Marc. 2004. "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts." *Journal of Empirical Legal Studies* 1(3):459-570. [skim]

3/26 – Hierarchy and Implementation

- Randazzo, Kirk A. 2008. "Strategic Anticipation and the Hierarchy of Justice in the U.S. District Courts." *American Politics Research* 36:669-693.
- Boyd, Christina L. 2013. "The Hierarchical Influence of Courts of Appeals on District Courts." *Journal of Legal Studies* 44:113-141.
- 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.
- 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.
- Canes-Wrone, Brandice. 2003. "Bureaucratic Decisions and the Composition of the Lower Courts." *American Journal of Political Science* 47(2):205–214.
- Spriggs, James F. 1996. "The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact." *American Journal of Political Science*. 40: 1122-1151.

Discussion leaders: _____

4/2 – 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.
- Box-Steffensmeier, Janet M., Dino P. Christenson, and Matthew Hitt. 2013. “Quality Over Quantity: Amici Influence and Judicial Decision Making.” *American Political Science Review* 107:1-15
- *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.
 - Boldt, Ethan D. and Christina L. Boyd. 2018. “The Political Responsiveness of Violent Crime Prosecution.” *Political Research Quarterly* 71(4): 936-948.

Discussion leaders: _____

[Manuscript Review due on 4/2 at start of class]

4/9 - Collegial Judging

- 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.
- 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.
- Sunstein, Cass R. (2000) “Deliberative Trouble? Why Groups Go to Extremes,” 110 *Yale Law J.* 71.
- Kastellec, John. 2011. “Hierarchical and Collegial Politics on the U.S. Courts of Appeals.” *Journal of Politics* 73:345-361
- Cross, Frank B. and Emerson H. Tiller. 1998. “Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals.” *Yale Law Journal* 107:2155.
- Bonneau, Chris W., Thomas H. Hammond, Forrest Maltzman and Paul J. Wahlbeck. 2007. “Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court.” *American Journal of Political Science* 51(4):890–905.
- Epstein, Lee, Jeffrey A. Segal, and Harold J. Spaeth. 2001. "The Norm of Consensus on the U.S. Supreme Court." *American Journal of Political Science* 45: 362.
- *Review:*
 - 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.

4/16 -- 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.
- Hausegger, Lori, and Stacia Haynie. 2003. "Judicial Decisionmaking and the Use of Panels in the Canadian Supreme Court and the South African Appellate Division." *Law and Society Review* 37:635-57.
- 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.
- Staton, Jeffrey K. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50:98-112.
- Dyevre, Arthur. 2010. "Unifying the Field of Comparative Judicial Politics: Towards a General Theory of Judicial Behaviour." *European Political Science Review* 2:297-327

Discussion leaders: _____

4/23 – 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.
- 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: _____

4/30 – Research Presentations in Class

5/6 – 10:00 a.m. final paper due (submit via eLC)