

POLS 8450 – Special Topics in Law and Courts
Spring 2020
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Overview

This course provides an overview of research that advances our understanding of law and courts from a social science perspective. While we will occasionally reference the US Supreme Court, our focus will be on studies of other US appellate courts. In the introduction to this course, we will examine the organization of the lower courts, including judicial recruitment processes. Then, we will turn our attention to research on models of decision making that hold relevance for understanding policy making and processes in (lower) appellate courts. In this section of the course, we will also take a “hands on” approach so that students will become familiar with data sources and measures used to study the U.S. Courts of Appeals.

In the second half of the course, we will study diversity on the courts, with a particular focus on judges. Our class sessions will draw on social science theories and empirical research to explore a wide range of questions: Does judicial diversity affect legitimacy? How does race, ethnicity, and/or gender affect judicial ambition and selection? Do these traits shape judicial policy predispositions and decision making? Does a judge’s identity and other background experiences affect opinion writing? Does the demographic composition of a court shape other deliberative processes, including oral argument? In addition to law and courts research, we will draw on scholarship from multiple political science subfields and other disciplines to develop our understanding of concepts, theories, and methodological approaches.

Requirements and Grading

Your grade will be based on the following:

1. One critical review of the scholarly literature assigned for class, including any recommended background readings. I will provide more guidance on how to write a literature review on ELC. Other than the sessions scheduled for February 5th and March 15th, you may select any session, beginning with our second meeting (January 22nd), as long as it is **not** one where you are a discussion leader. (25%). Your literature review must be submitted (electronically) prior to the class meeting.
2. Group data collection and analysis project (20%): As of November 1, 2019, President Trump had appointed 43 judges to the U.S. Courts of Appeals; by comparison, Obama had appointed 48 judges over two terms and G.W. Bush named 60. Drawing on previous scholarship that suggests a link between judicial

selection processes and decision making, each small group (3-4 students) will be charged with collecting and analyzing data to compare policymaking outcomes/process by Trump appointees with those appointed by other presidents on one of the (12) U.S. courts of appeals (excluding the federal circuit). In the initial step of this project, students will become familiar with the Multi-User Database of US Courts of Appeals decisions and develop a coding process for a limited set of variables that is consistent with the conventions used for this database. Each group will then use WESTLAW to pull a sample of (published) court opinions (minimum of 50 cases), code information from the opinions, compile the data, and then present a descriptive analysis (as a power point) on February 26th.

3. Original research paper. The specific requirements for this paper will vary with the student's degree program. All students will identify a research question or problem, review relevant scholarship, outline expectations, and provide a detailed observation strategy for evaluating your expectations (measures and data). PhD students will use an appropriate statistical model to test their expectations and interpret the findings of the data analysis. All other students will conduct an analysis that draws on their skills acquired from their previous coursework. All students will present their research at the end of the semester. A detailed paper proposal is due by February 12th; the list of references to be used for the review of the scholarly literature and a description of the observation strategy are due by March 4th. Presentations will take place on April 8th or 22nd with final drafts of papers submitted no later than May 1st (35%)
4. Preparation for class meetings and general contributions to our discussion (10%). For one class session, you will circulate a list of 3 discussion points/questions two days prior to the seminar and then lead (or co-lead) the discussion in class (10%). You must sign up for a session by January 20th (first come-first served). No more than two students can share discussion responsibilities for any single class.

Academic honesty. All students are responsible for maintaining the highest standards of honesty and integrity in every phase of their academic careers. The penalties for academic dishonesty are severe and ignorance is not an acceptable defense. All academic work for this course must meet the standards contained in "A Culture of Honesty." Students are responsible for informing themselves about those standards before performing any academic work. The penalties for academic dishonesty are severe, and ignorance is not an acceptable defense.

The following is a TENTATIVE and PARTIAL schedule of readings and assignments.

*****Our first meeting will be held on **January 15th** due to the SPSA. Given that we will not meet on January 8th, it is expected that students will be prepared (having completed the readings) for class on the 15th*****

1. Getting started: court organization and selection processes – **January 15th**

Collins, P.M. and W.L. Martinek. 2011. "The Small Group Context: Designated District Court

Curry, Brett. "Institutions, Interests, and Judicial Outcomes: The Politics of Federal Diversity Jurisdiction." *Political Research Quarterly* 60.3 (2007): 454-467.

Giles, Micheal W., Virginia A. Hettinger, and Todd Peppers. 2001. "Picking federal judges: A note on policy and partisan selection agendas." *Political Research Quarterly* 54.3 (2001): 623-641.

G. Goelzhauser. 2016. *Choosing State Supreme Court Justices* (Philadelphia, PA: Temple University Press), Chapter 3, "Professional Experience across Selection Systems" (will upload to ELC)

Hall, Melinda. *Attacking Judges: How Campaign Advertising Influences State Supreme Court Elections*. Stanford University Press, 2014. (will upload selection to ELC)

Scherer, Nancy, Brandon L. Bartels, and Amy Steigerwalt. 2008. "Sounding the fire alarm: The role of interest groups in the lower federal court confirmation process." *The Journal of Politics* 70.4: 1026-1039.

Recommended background reading:

Slotnick, Elliot, Sheldon Goldman, and Sara Schiavoni. 2016. "Writing the Book of Judges, Part II." *Journal of Law and Courts*.

Chapters 4 and 5 from Corley, Ward, and Martinek's *American Judicial Process* (will be uploaded to ELC). If you are well-versed on American courts and process, you will only need to skim these chapters

2. Decision making, U.S. Courts of Appeals – January 22nd

Black, Ryan C., and Ryan J. Owens. 2013. "Bargaining and Legal Development in the United States Courts of Appeals." *American Politics Research* (2013):

Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. Harvard University Press (selections will be uploaded to ELC).

Hettinger, V. A., Lindquist, S. A. and Martinek, W. L. 2004. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals." *American Journal of Political Science*, 48: 123–137

Hinkle, R. K. 2017. Panel Effects and Opinion Crafting in the US Courts of Appeals. *Journal of Law and Courts*, 5(2), 313-336.

Kaheny, Erin B., Susan Brodie Haire, and Sara C. Benesh. 2008. "Change over tenure: Voting, variance, and decision making on the US courts of appeals." *American Journal of Political Science* 52.3: 490-503.

Klein, D.E. and R.J. Hume. 2003. "Fear of Reversal as an Explanation of Lower Court Compliance." *Law and Society Review* 37: 579-581.

Recommended background reading:

Harris, A.P. and Sen, M., 2019. Bias and judging. *Annual Review of Political Science*. p. 241-246

Haire, Susan, Reginald S. Sheehan, and Ali S. Masood. 2017. "The Courts of Appeals." *Routledge Handbook of Judicial Behavior*. Routledge, 241-258 (will upload selections to ELC).

3. "Top-down, bottom-up, and across": perspectives on law, hierarchy, and precedent – January 29th

Hinkle, R.K. 2015. "Legal Constraint in the US Courts of Appeals." *Journal of Politics*, 77(3), 721-735.

Hinkle, R. K., & Nelson, M. J. 2016. The Transmission of Legal Precedent among State Supreme Courts in the Twenty-First Century. *State Politics & Policy Quarterly*, 16(4), 391-410.

Klein, D. 2002. *Making Law on the U.S. Courts of Appeals*. Cambridge University Press. (Selections to be uploaded to ELC)

Moyer, Laura P., Todd A. Collins, and Susan B. Haire. 2013. "The Value of Precedent: Appellate Briefs and Judicial Opinions in the US Courts of Appeals." *Justice System Journal* 34.1: 62-84.

Moyer, Laura P., and Holley Tankersley. 2012. "Judicial innovation and sexual harassment doctrine in the US Courts of Appeals." *Political Research Quarterly* 65.4: 784-798.

Savchak, Elisha Carol, and Jennifer Barnes Bowie. 2015. "A Bottom-Up Account of State Supreme Court Opinion Writing." *Justice System Journal*: 1-26.

Recommended background reading:

Kornhauser, Lewis. 1995. "Adjudication by a Resource-Constrained Team: Hierarchy and Precedent in a Judicial System," *Southern California Law Review* 68:1605.

4. a) Litigants, advocates b) data and measures – February 5th

Moyer, Laura P., Todd A. Collins, and Susan B. Haire. 2013. "The Value of Precedent: Appellate Briefs and Judicial Opinions in the US Courts of Appeals." *Justice System Journal* 34.1: 62-84.

Songer, Donald R., Reginald S. Sheehan, and Susan Brodie Haire. "Do the Haves Come out ahead over Time-Appling Galanter's Framework to Decisions of the US Courts of Appeals, 1925-1988." *Law and Society Review*. 33 (1999): 811.

Szmer, John, Donald R. Songer, and Jennifer Bowie. "Party Capability and the US Courts of Appeals: Understanding why the "haves" win." *Journal of Law and Courts* 4.1 (2016): 65-102.

Szmer, John, Susan W. Johnson, and Tammy A. Sarver. 2007. "Does the lawyer matter? Influencing outcomes on the Supreme Court of Canada." *Law & Society Review* 41.2: 279-304.

Recommended background reading:

Galanter, M., 1974. Why the haves come out ahead: Speculations on the limits of legal change. *Law & Soc'y Rev.*, 9, p.95.

Kritzer, H.M., 2003. The government gorilla. *In Litigation: Do the "Haves" Still Come Out Ahead.* (will upload copy to ELC)

b) Data, measures, and "cool tools": *readings and links to be uploaded to ELC*

Part II.

1. (a) Descriptive representation and legitimacy – February 12th

Fix, Michael P., and Gbemende E. Johnson. 2017. "Public Perceptions of Gender Bias in the Decisions of Female State Court Judges." *Vand. L. Rev.* 70: 1845.

Gill, Rebecca D., Sylvia R. Lazos, and Mallory M. Waters. 2011. "Are judicial performance evaluations fair to women and minorities? A cautionary tale from Clark County, Nevada." *Law & Society Review* 45.3: 731-759.

Goelzhauser, G. (selection to be uploaded to ELC) 2019. "Descriptive representation (intersectionality) and state supreme courts"

Scherer, Nancy and Brett Curry. 2010. "Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of the U.S. Courts." *Journal of Politics* 72:

90-104.

(b) Ambition – February 12th

Fox, R., and Lawless, J. 2014. Uncovering the Origins of the Gender Gap in Political Ambition. *American Political Science Review*, 108(3), 499-519.

Holman, Mirya R., and Monica C. Schneider. 2018. "Gender, race, and political ambition: how intersectionality and frames influence interest in political office." *Politics, Groups, and Identities* 6.2 : 264-280.

Nguyen, T. 2019. Why Women Win: Gender and Success in State Supreme Court Elections. *American Politics Research*, 47(3), 582–600.

2. Studying the effect of sex/gender – February 19th

a) Individual differences

Boyd, Christina L., Lee Epstein, and Andrew D. Martin. "Untangling the Causal Effects of Sex on Judging." *American Journal of Political Science* 54 (April 2010): 389-411, *with an emphasis on individual differences*

Haire, S.B. and Moyer, L.P., 2015. *Diversity matters: Judicial policy making in the US Courts of Appeals*. University of Virginia Press (chapter on women judges and "splitting the difference"-- will be uploaded to ELC)

Johnson, Susan W. 2017. "Family Matters: Justice Gender and Female Litigant Success in Family Law Cases in the Supreme Court of Canada." *Justice System Journal* 38.4 : 332-347.

Moyer, Laura P., and Susan B. Haire. 2015. "Trailblazers and Those That Followed: Personal Experiences, Gender, and Judicial Empathy." *Law & Society Review* 49.3: 665-689.

Recommended background:

Carol Gilligan, "In a Different Voice: Women's Conceptions of Self and of Morality," (selections, will upload to ELC)

Davis, S., 1992. Do Women judges Speak 'In A Different Voice'? : Carol Gilligan, Feminist Legal Theory, and the Ninth Circuit." *Wisconsin Women's Law journal* 8: 143-73

Harris, A.P. and Sen, M., 2019. Bias and judging. *Annual Review of Political Science*. p. 247-248; 251-252

b) Organizational settings

Haire, S.B. and Moyer, L.P., 2015. *Diversity matters: Judicial policy making in the US Courts of Appeals*. University of Virginia Press, selection on gender composition of circuit

Karpowitz, Christopher F., Tali Mendelberg, and Lee Shaker. "Gender inequality in deliberative participation." *American Political Science Review* 106.03 (2012): 533-547.

Moyer, L., Szmer, J., Christensen, R. & Haire, S. 2019. "All Eyes are on You": Gender and Majority Opinion Writing on the U.S. Courts of Appeals" (will be uploaded to ELC)

February 26th – group presentations

3. Race, ethnicity – March 4th

Bonneau, Chris W. and Heather Rice. 2009. "Impartial Judges? Race, Institutional Context, and US State Supreme Courts." *State Politics & Policy Quarterly* 9.4: 381-403.

Hofer, S., & Casellas, J. 2019. Latino Judges on the Federal District Court: ¿Cómo Deciden? *American Politics Research*.

Kastellec, Jonathan P. "Racial diversity and judicial influence on appellate courts." *American Journal of Political Science* 57.1 (2013): 167-183

McClain, Paula D., et al. 2009. "Group Membership, Group Identity, and Group Consciousness: Measures of Racial Identity in American Politics?." *Annual Review of Political Science* 12: 471-485.

Szmer, J., Christensen, R.K. and Kaheny, E.B., 2015. Gender, race, and dissensus on state supreme courts. *Social Science Quarterly*, 96(2), pp.553-575.

Washington, Linn. *Black judges on justice: Perspectives from the bench*. New Press, 1994 (selections to be uploaded to ELC)

Recommended background:

Harris, A.P. and Sen, M., 2019. Bias and judging. *Annual Review of Political Science*. p. 248-250

March 11th – spring break

March 18th – new and forthcoming lines of inquiry (readings and links TBA)

4. March 25th

a) Intersectionality/ race and gender

Collins, Todd, and Laura Moyer. 2007. "Gender, race, and intersectionality on the federal appellate bench." *Political Research Quarterly* (2007).

Kaheny, E.B., Szmer, J. and Christensen, R.K., 2019. Status characteristics and their intersectionality: majority opinion assignment in state supreme courts. *Politics, Groups, and Identities*, pp.1-24.

Recommended background: Hajer Al-Faham, Angelique M. Davis, Rose Ernst. 2019. "Intersectionality: from theory to practice." *Annual Review of Law and Social Science* 2019 15:1, 247-265

b) Diversity and deliberative processes

Haire, Susan B., Laura P. Moyer, and Shawn Treier. "Diversity, Deliberation, and Judicial Opinion Writing." *Journal of Law and Courts* 1.2 (2013): 303-330.

Sommers, Samuel R. 2006. "On racial diversity and group decision making: identifying multiple effects of racial composition on jury deliberations." *Journal of personality and social psychology* 90.4: 597

Review Boyd et al and Kastlelec articles, with an emphasis on those parts of the articles that focus on the presence of women and minorities

Recommended background:

Karpowitz, C.F. and Mendelberg, T., 2014. *The silent sex: Gender, deliberation, and institutions*. Princeton University Press (selections, uploaded to ELC).

April 1st

Other aspects of diversity scholarship

Christensen, R.K., Szmer, J. and Stritch, J.M., 2012. Race and gender bias in three administrative contexts: Impact on work assignments in state supreme courts. *Journal of Public Administration Research and Theory*, 22(4), pp.625-648.

Correll, Shelley J., and Cecilia L. Ridgeway. 2006. "Expectation states theory."
Handbook of social psychology. Springer Us., 29-51 (selections uploaded to ELC)

Dietrich, B.J., Enos, R.D. and Sen, M., 2017. *Gender dynamics in elite political contexts: evidence from supreme court oral arguments*. Working Paper.

<http://www.scotusblog.com/2018/08/empirical-scotus-a-little-change-will-do-you-good-oral-argument-interruptions-ot2017/>

Eagly, A.H., 2016. When passionate advocates meet research on diversity, does the honest broker stand a chance?. *Journal of Social Issues*, 72(1), pp.199-200; p. 204-215

Rachlinski, J.J., Johnson, S.L., Wistrich, A.J. and Guthrie, C., 2008. Does unconscious racial bias affect trial judges. *Notre Dame L. Rev.*, 84, p.1195.

Shahshahani, S. and Liu, L.J., 2017. Religion and judging on the federal Courts of Appeals. *Journal of Empirical Legal Studies*, 14(4), pp.716-744.

National Academies of Sciences, Engineering, and Medicine, 2018. *Sexual harassment of women: climate, culture, and consequences in academic sciences, engineering, and medicine*. National Academies Press. (selections)

April 8th, 22nd – presentations

Final paper due May 1st