

POLS 8430: Judicial Politics
Spring 2022
Baldwin Hall Rm 302; Tuesdays 6:35-9:20pm

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Office Hours: 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 Manuscript 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.

More on discussion leaders: Most substantive classes will have discussion leaders. Your jobs in this role may include: prepare discussion questions for the class, 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, help your classmates analyze/critique the authors' theory, research design, 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." Notes based on prior experiences: (1) discussion leaders should not be providing lengthy lectures on the material. Your role is to facilitate discussion of the assigned articles and the broader topic. (2) At times, Dr. Boyd will step in in minor or even major ways to help facilitate discussion and keep the conversation moving in the right direction. When this happens, the discussion leader will often be the first person Dr. Boyd calls on to answer questions. This semester, every student will be a discussion leader twice. Sign up for two your discussion classes of choice here: <https://docs.google.com/spreadsheets/d/1uO8-mYUcBcLShscdvQ9axh4r4ZBGmMwEKIJcKJx6Uqk/edit?usp=sharing>

The **two critical manuscript 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 (as determined after consultation with Dr. Boyd). 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.

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

1/18 – Federal Judicial Selection and Departures

- 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. [skim; no discussion required]
- 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.
- Smelcer, Susan Navarro, Amy Steigerwalt, and Richard L. Vining. 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.
- Boyd, Christina L., Paul M. Collins, Jr., and Lori A. Ringhand. 2018. “The Role of Nominee Gender and Race at U.S. Supreme Court Confirmation Hearings.” *Law & Society Review* 52: 871-901.
- 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.
- 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.
- *Recommended Background*: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapter 5]

1/25 – State Judicial Selection and Departures

- 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.
- Lim, Claire S. H. 2013. “Preferences and Incentives of Appointed and Elected Public Officials: Evidence from State Trial Court Judges.” *American Economic Review* 103:1360-1397.
- 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.
- 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.
- 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.

2/1 – Morgan Hazelton (St. Louis University) Visit and Readings

- “Greatest Hits” Readings TBA
- No discussion leader this week; In-class Q&A with Morgan + light in-class discussion of her greatest hits research

2/8 –Judicial Decision Making I

- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge Univ Press. [discussion on pages 44-96; skim Chaps 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.
- Baum, Lawrence. 1994. “What Judges Want: Judges’ Goals and Judicial Behavior.” *Political Research Quarterly* 47: 749-768.
- Hinkle, Rachael K. 2015. “Legal Constraint in the U.S. Courts of Appeals” *Journal of Politics* 77: 721-735.
- 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: 305-320.
 - Skim these additional articles to understand the debate following the Richards and Kritzer article [no discussion required of additional articles]
 - 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

****Manuscript Review #1 due at the beginning of class on 2/8****

2/15 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]
- Epstein, Lee, Jack Knight, and Andrew D. Martin. 2001. "The Supreme Court as a Strategic National Policy Maker." *Emory Law Journal* 50: 583.
- Boyd, Christina L. 2016. “Representation on the Courts? The Effects of Trial Judges’ Sex and Race.” *Political Research Quarterly* 69: 788-799.
- Kastle, Jonathan P. 2013. “Racial Diversity and Judicial Influence on Appellate Courts.” *American Journal of Political Science* 57:167–83
- 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.
- An Introduction to the Federal Judicial Database [on eLC; no discussion]

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.

- Bailey, Michael. 2007. “Comparable Preference Estimates across Time and Institutions for the Court, Congress, and Presidency.” *American Journal of Political Science*, 51: 433-448.
- 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.
- Bonica, Adam and Maya Sen. 2017. “A Common-Space Scaling of the American Judiciary and Legal Profession.” *Political Analysis* 25:115-121.
- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. “Measuring the Preferences of State Supreme Court Judges.” *Journal of Politics* 62:387-413.
- 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.
- Hall, Matthew E. K. and Jason Harold Windett. 2013. “New Data on State Supreme Court Cases.” *State Politics & Policy Quarterly* 13:427-445.
- Boyd, Christina L., Pauline T. Kim, and Margo Schlanger. 2020. “Mapping the Iceberg: The Impact of Data Sources on the Study of District Courts.” *Journal of Empirical Legal Studies* 17(3): 466-492.
- Bailey, Michael A. 2018. “Measuring Ideology on the Courts” *Routledge Handbook of Judicial Behavior*. [On eLC; All students should read]
- SCDB Memo on eLC + preview database at www.scdb.wustl.edu [All students should read]

****No assigned discussion leaders this week of 2/22. Instead, and unless otherwise noted, above readings should be divided among all of class to informally present to class by theme (work in groups to divide and conquer)****

3/1 - In Class Midterm

3/8 – No Class (Spring Break)

3/15 - Supreme Court I (Cert, Lawyers, Amicus, SG)

- *Background Reading*: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapter 6]
- 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.
- 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.
- Black, Ryan C. and Christina L. Boyd. 2012. “US Supreme Court Agenda Setting and the Role of Litigant Status.” *Journal of Law, Economics, & Organization* 28(2): 286-312.
- 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.
- 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

****Research Paper Proposal due no later than start of class on 3/15****

3/22-Supreme Court II (oral arguments, opinions, clerks)

- 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.
- Feldman, Adam and Rebecca D. Gill. 2019. "Power Dynamics in Supreme Court Oral Arguments: The Relationship between Gender and Justice-to-Justice Interruptions." *Justice System Journal* 40:173-195.
- Maltzman, Forrest and Paul J. Wahlbeck. 2004. "A Conditional Model of Opinion Assignment on the Supreme Court." *Political Research Quarterly* 57:551-563.
- Corley, Pamela. 2008. "The Supreme Court and Opinion Content: The Influence of Parties' Briefs." *Political Research Quarterly* 61(3): 468-478.
- Clifford J. Carrubba, Barry Friedman, Andrew D. Martin, and Georg Vanberg. 2012. "Who Controls the Content of Supreme Court Opinions?" *American Journal of Political Science*. 56: 400-412.
- Bonica, Adam, Adam Chilton, Jacob Goldin, Kyle Rozema, and Maya Sen. 2019. "Legal Rasputins? Law Clerk Influence on Voting at the US Supreme Court." *Journal of Law, Economics, & Organization* 35:1-36.
- *Recommended Background*: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. [Chapter 9]

****Syllabus assignment due at start of class 3/22****

3/29-Collegal Courts and Judging

- *Background Reading*: Sunstein, Cass R. 2002. "The Law of Group Polarization." *Journal of Political Philosophy* 10:175-195.
- Kestelec, John. 2011. "Hierarchical and Collegial Politics on the U.S. Courts of Appeals." *Journal of Politics* 73:345-361.
- Hinkle, Rachael K. 2017. "Panel Effects and Opinion Crafting in the US Courts of Appeals." *Journal of Law and Courts*. 5(2): 313-336.
- 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.
- 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.
- Moyer, Laura P., John Szmer, Susan Haire, and Robert K. Christensen. 2021. "'All Eyes Are on You': Gender, Race, and Opinion Writing on the US Courts of Appeals." *Law & Society Review* 55:452-472.
- Tiede, Lydia B. 2016. "The Political Determinants of Judicial Dissent: Evidence from the Chilean Constitutional Tribunal." *European Political Science Review* 8:377-403

4/5-Trial Courts and Judicial Hierarchy

- *Background reading*: Boyd, Christina L. and Ethan D. Boldt. 2017. "U.S. District Courts." In *Routledge Handbook Judicial Behavior*. Robert M. Howard and Kirk A. Randazzo, eds. New York, NY: Routledge. [on eLC]
- 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.
- 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.

****Manuscript Review #2 due on 4/5 at start of class****

4/12 – Courts and the Public

- 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.
- Nelson, Michael J. 2014. "Responsive Justice? Retention Elections, Prosecutors, and Public Opinion." *Journal of Law and Courts* 2:117-152.
- 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.
- Bartels, Brandon L., and Christopher D. Johnston. 2013. "On the Ideological Foundations of Supreme Court Legitimacy in the American Public." *American Journal of Political Science* 57: 184-99.
- Gibson, James L. and Michael J. Nelson. 2015. "Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science* 59: 162-74.
- Nicholson, Stephen P. and Thomas G. Hansford. 2014. "Partisans in Robes: Party Cues and Public Acceptance of Supreme Court Decisions." *American Journal of Political Science* 58:620-636.
- Wedeking, Justin, and Michael A. Zilis. 2018. "Disagreeable Rhetoric and the Prospect of Public Opposition: Opinion Moderation on the U.S. Supreme Court." *Political Research Quarterly* 7(2): 380-394.

4/19 – Courts and Bureaucracy

- Canes-Wrone, Brandice, 2003, "Bureaucratic Decisions and the Composition of the Lower Courts." *American Journal of Political Science* 47: 205-214.
- Spriggs, James F. II. 1996. "The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact." *American Journal of Political Science* 40: 1122.
- Boyd, Christina L., Michael J. Nelson, Ian Ostrander, and Ethan D. Boldt. 2021. *The Politics of Federal Prosecution*. Oxford University Press. [Chapters 5 and 6 only; on eLC]

- Boyd, Carlos, Taylor, Baker, Blasingame. “Reviewing In Absentia Immigration Removal Orders in the Federal Circuit Courts” [Manuscript Draft on eLC]
- Barnett, Kent, Christina L. Boyd, and Christopher J. Walker. 2018. “Administrative Law’s Political Dynamics.” *Vanderbilt Law Review* 71: 1463-1526.

4/26 -- Comparative and International Courts

- 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.
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96: 291.
- 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.
- Gibson, James L, Gregory A. Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92: 343
- Gibler, Douglas M. and Kirk A. Randazzo. 2011. “Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding.” *AJPS* 55: 696-709.
- Grossman, G, Gazal-Ayal O, Pimentel S, Weinstein J. 2016. “Descriptive Representation and Judicial Outcomes in Multi-Ethnic Societies.” *American Journal of Political Science* 60(1):44-69.

5/3 – Research Presentations in Class

5/6 – Final paper due by 8:00pm (submit via eLC)