
THE GREATEST HITS OF JUDICIAL POLITICS

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DISCLAIMER

This is an idiosyncratic view and doesn't pretend to be anything else. Nor is it encyclopedic. Hence, I apologize to anyone who might feel slighted by the omission of their work, outraged by the neglect of work they believe important, or infuriated by the inclusion of work they find misguided. No slights were intended and oversights abound.

THE CORE OF THE FIELD

I see the following as the central topics in "judicial politics":

- 1) Decision making on collegial courts (incl effects of diversity & panel composition)
- 2) Design and operation of judicial hierarchies
- 3) Courts in the separation of powers system
- 4) Courts and interest groups/strategic litigation
- 5) Courts and public opinion
- 6) Social impact of courts

In addition there are some topics that I find particularly worthy, especially:

- 7) Courts and economic development
- 8) Courts and American political development (social science history)
- 9) Scaling SC justices & opinions
- 10) Statistical estimation of law and legal doctrine
- 11) Precedent and horizontal stare decisis
- 12) Courts and federalism
- 13) Incentive and policy effects of judicial elections
- 14) Politics of SC nominations
- 15) International and comparative law

In each of these areas I mention a few readings that seem central, of historic importance, or define current research frontiers.

The following is extremely useful as a starting place: What are courts? What do they do? How are they organized?

Kornhauser, Lewis. 1999. "Judicial Organization and Administration," *Encyclopedia of Law and Economics*. <http://encyclo.findlaw.com/7100book.pdf>

1. DECISION MAKING ON COLLEGIAL COURTS

Kornhauser, Lewis. 1999. "Supreme Courts and Appeals," *Encyclopedia of Law and Economics*. I do include many review essays here but this achieves excellence.
<http://encyclo.findlaw.com/7200book.pdf>

Murphy, Walter. *Elements of Judicial Strategy*. Chicago: University of Chicago Press, 1974.

Segal, Jeffrey, and Spaeth, Harold. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press, 2002.

Epstein, Lee, and Knight, Jack. *The Choices Justices Make*. Washington, D.C.: CQ Press, 1997.

Perry, H.W. *Deciding to Decide : Agenda setting in the United States Supreme Court*. Cambridge: Harvard University Press, 1991.

Hammond, Thomas H., Bonneau, Chris W., and Sheehan, Reginald S. *Strategic Behavior and Policy Choice on the US Supreme Court*. Stanford: Stanford University Press, 2005.

Epstein, Lee, Segal, Jeffrey, and Spaeth, Harold. 2001. "[The Norm of Consensus on the U.S. Supreme Court](#)," *American Journal of Political Science* 45(2): 362-377.

Schwartz, Edward. 1992. "[Policy, Precedent, and Power: A Positive Theory of Supreme Court Decision-making](#)," *Journal of Law, Economics, and Organization* 8(2): 219-252.

Kornhauser, Lewis A. 1992. "[Modeling Collegial Courts II. Legal Doctrine](#)," *Journal of Law, Economics, and Organization* 8(3): 441-470.

Lax, Jeffrey, and Cameron, Charles. 2007. "Bargaining and Opinion Assignment on the U.S. Supreme Court," *Journal of Law, Economics, and Organization* 23(2): 276-302.
http://www.columbia.edu/~jrl2124/Bargaining_final.pdf

Lax, Jeffrey. 2007. "Constructing Legal Rules on Appellate Courts," *American Political Science Review* 101(3): 591-604. http://www.columbia.edu/~jrl2124/Constructing_Rules_final.pdf

Caldeira, Gregory, Wright, John, and Zorn, Christopher. 1999. "Sophisticated Voting and Gatekeeping in the Supreme Court," *Journal of Law, Economics, and Organization* 15(3): 549-572.

PANEL COMPOSITION AND DIVERSITY

Revesz, Ricky. 1997. "[Environmental Regulation, Ideology, and the D.C. Circuit](#)," *Virginia Law Review* 83(8): 1717-1772.

Farhang, Sean, and Wawro, Gregory. 2004. "Institutional Dynamics on the U.S. Courts of Appeals: Minority Representation Under Panel Decision Making," *Journal of Law, Economics and Organization* 20(2): 299-330.

Christina Boyd, Lee Epstein, and Andrew Martin. 2008. "Untangling the Effects of Sex on Judging," <http://epstein.law.northwestern.edu/research/genderjudging.html>

Fischman, Joshua. 2008. "Decision Making Under a Norm of Concensus: A Structural Analysis of Three Judge Panels," Working paper, Department of Economics, Tufts. Available at SSRN: <http://ssrn.com/abstract=912299>

John Kastellec, "Panel Composition and judicial Compliance on the U.S. Courts of Appeals," *Journal of Law, Economics, and Organization* 23(2):421-441.

<http://jleo.oxfordjournals.org/cgi/reprint/ewm026?ijkey=hZGsXanmYHpeMFu&keytype=ref>

2. HISTORY, DESIGN & OPERATION OF JUDICIAL HIERARCHIES

- Kornhauser, Lewis A. 1995. "Adjudication by a Resource-Constrained Team: Hierarchy and Precedent in a Judicial System." *Southern California Law Review* 68(6): 1605-1630.
- Cameron, Charles M., Segal, Jeffrey A., Songer, Donald. 2000. "[Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions.](#)" *American Political Science Review* 94(1): 101-116.
- Spitzer, Matt, and Talley, Eric. 2000. "[Judicial Auditing.](#)" *Journal of Legal Studies* 29(2): 649-683.
- Robert Kagan, Bliss Cartwright, Lawrence Friedman, and Stanton Wheeler. 1978. "[The Evolution of State Supreme Courts.](#)" *Michigan Law Review* 76 (6): 961-1005.
- Clark, Tom S. 2009. "A Principal-Agent Theory of En Banc Review," *Journal of Law, Economics, and Organization* 25(1): Forthcoming.
- Lax, Jeffrey. 2003. "Certiorari and Compliance in the Judicial Hierarchy: Discretion, Reputation, and the Rule of Four," *Journal of Theoretical Politics* 15(1): 61-86.
[http://www.columbia.edu/~jrl2124/Certiorari%20and%20Compliance%20\(Lax,%20JTP\).pdf](http://www.columbia.edu/~jrl2124/Certiorari%20and%20Compliance%20(Lax,%20JTP).pdf)
- Cameron, Charles M., and Kornhauser, Lewis A. 2006. "Appeals Mechanisms, Litigant Selection, and the Structure of Judicial Hierarchies," pp. 173-205 in Rogers, Flemming, and Bond (eds) *Institutional Games and the US Supreme Court*.

3. COURTS AND THE SOP SYSTEM

- Ferejohn, John, and Shipan, Charles. 1990. "[Congressional Influence on Bureaucracy.](#)" *Journal of Law, Economics, and Organization* 6(Special Issue): 1-20.
- Eskridge, William. 1991. "Reneging on History? Playing the Court/Congress/President Civil Rights Game," *California Law Review* 79: 613-684.
- Spiller, Pablo, and Gely, Rafael. 1992. "[Congressional Control or Judicial Independence: The Determinants of US Supreme Court Labor-Relations Decisions 1949-1988.](#)" *Rand Journal of Economics* 23(4): 463-492.
- Segal, Jeffrey. 1997. "[Separation of Powers Games in the Positive Theory of Congress and Courts.](#)" *American Political Science Review* 91(1): 28-44.
- Spiller, Pablo, and Tiller, Emerson. 1996. "Invitations to Override: Congressional Reversals of Supreme Court Decisions," *International Review of Law and Economics* 16(4): 503-521.
- Eskridge, William. 1991. "[Overriding Supreme Court Statutory Interpretation Decisions.](#)" *Yale Law Journal* 101(2): 331-417.
- DeFigueiredo, John, and Tiller, Emerson. 1996. "[Congressional Control of the Courts: Analysis of Expansion of the Federal Judiciary.](#)" *Journal of Law and Economics* 39(2): 435-462.
- Ferejohn, John. 1999. "Independent Judges, Dependent Judiciary: Explaining Judicial Independence," *Southern California Law Review* 72(2): 353-384.
- Clark, job market paper
- Rogers, James R. 2001. "[Information and Judicial Review: A Signaling Game of Legislative-Judicial Interaction.](#)" *American Journal of Political Science* 45(1): 84-99.

- McNollgast. 1987. "[Administrative Procedures as Instruments of Political Control](#)," *Journal of Law, Economics, and Organization* 3(2): 243-277.
- . 1989. "[Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies](#)," *Virginia Law Review* 75(2): 431-482.
- Landes, William, and Posner, Richard. 1975. "[The Independent Judiciary in an Interest Group Perspective](#)," *Journal of Law and Economics* 18(3): 875-902.

4. INTEREST GROUPS AND STRATEGIC LITIGATION

- Baird, Vanessa. *Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda*. Charlottesville : University of Virginia Press, 2007.
- Caldeira, Gregory A., and Wright, John R. 1988. "[Organized Interests and Agenda Setting in the U.S. Supreme Court](#)," *American Political Science Review* 82(4): 1109-1128.
- Teles, Steven. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton: Princeton University Press, 2008.
- Epp, Charles. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press, 1998.
- Tushnet, Mark. *The NAACP's Legal Strategy against Segregated Education, 1925-1950*. Chapel Hill: University of North Carolina Press, 2005.
- McGuire, Kevin T., and Caldeira, Gregory A. 1993. "[Lawyers, Organized Interests, and the Law of Obscenity: Agenda Setting in the Supreme Court](#)," *American Political Science Review* 87(3): 717-726.
- Caldeira, Gregory A, and Wright John R. 1990. "[Amici Curiae Before the Supreme Court: Who Participates, When, and How Much?](#)" *The Journal Of Politics* 52(3): 782-806.

5. COURTS AND PUBLIC OPINION

- Marshall, Thomas. *Public Opinion and the Supreme Court*. Boston: Unwin Hyman, 1989.
- Caldeira and Gibson, recent papers
- Gibson, James L., Caldeira, Gregory A., and Baird, Vanessa A. 1998. "[On the Legitimacy of National High Courts](#)," *American Political Science Review* 92(2): 343-358.
- Dahl, Robert A. 1957. "Decision-making in a Democracy: The Supreme Court as a National Policy Maker," *Journal of Public Law* 6: 279-295.
- Casper, Jonathan D. 1976. "[The Supreme Court and National Policy Making](#)," *American Political Science Review* 70(1): 50-63.
- Epstein, Lee, Ho, Daniel E., King, Gary, and Segal, Jeffrey A. 2005. "The Supreme Court During Crisis: How War Affects Only Nonwar Cases." *NYU Law Review* 80(1): 1-116.
- VanBerg, Georg. *The Politics of Constitutional Review in Germany*. Cambridge, U.K.: Cambridge University Press, 2004.
- Staton, Jeffrey K. 2006. "[Constitutional Review and the Selective Promotion of Case Results](#)," *American Journal of Political Science* 50(1): 98-112.
- Weingast, Barry R. 1997. "[The Political Foundations of Democracy and the Rule of Law](#)," *American Political Science Review* 91(2): 245-263.

6. SOCIAL IMPACT OF COURTS

- Rosenberg, Gerald. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press, 1993.
- Ellickson, Robert. *Order without Law: How Neighbors Settle Disputes*. Cambridge: Harvard University Press, 1991.

7. ECONOMIC IMPACT OF COURTS (COURTS AND ECONOMIC DEVELOPMENT)

- La Porta, Rafael, Lopez de Silanes, Florencio, and Shleifer, Andrei. 2004. "Judicial Checks and Balances," *Journal of Political Economy* 112(2): 445-470.
- Barro, Robert. "Democracy and the Rule of Law," pp. 209-231 in Bruce Bueno de Mesquita and Hilton Root (eds), *Governing for Prosperity* (2000).
- Glaeser, Edward L., and Shleifer Andrei. 2002. "[Legal Origins](#)." *Quarterly Journal of Economics*. 117(4): 1193-1230.
- Tim Frye papers

8. COURTS AND APD

- Forbath, William. *Law and the Shaping of the American Labor Movement*. Cambridge: Harvard University Press, 1991.
- Bensel, Richard. *The Political Economy of American Industrialization 1877-1900*. Chapter 5: "Political Construction of the National Market," esp. pp. 321-354 (2000)
- Scheiber, Harry, "Federalism," pp. 278-286 in *Oxford Companion to the Supreme Court*.
- Hattam, Victoria. *Labor Visions and State Power*. Princeton: Princeton University Press, 1993.
- Kahn, Ronald, and Kersch, Ken, eds. *The Supreme Court and American Political Development*. Lawrence: University Press of Kansas, 2006.
- Sean Farhang, forthcoming book.
- . 2007. "[Congressional Mobilization of Private Litigants: Evidence from the Civil Rights Act of 1991](#)." Working paper.
- Gillman, Howard. 2002. "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891," *American Political Science Review* 96(3): 511-524.
- Clark, Tom S., and Whittington, Keith. 2006. "Judicial Review of Acts of Congress." Presented at the Conference on Empirical Legal Studies.

9. SCALING JUSTICES AND OPINIONS

- Martin, Andrew D., and Quinn, Kevin M. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the US Supreme Court, 1953-1999," *Political Analysis* 10(2): 134-153.

- Bafumi, Joseph, Gelman, Andrew, Park, David K., and Kaplan, Noah. 2005. "Practical Issues in Implementing and Understanding Bayesian Ideal Point Estimation," *Political Analysis* 13(2): 171-187.
- Clark, Tom S., and Lauderdale, Benjamin. "Locating Supreme Court Opinions in 'Doctrine Space.'" Working paper.
- Bernard Grofman and Timothy Brazill. 2002. "Identifying the Median Justice on the Supreme Court through Multidimensional Scaling: Analysis of the Natural Courts 1953-1991," *Public Choice* 112(1-2): 55079.
- Michael Bailey. 2007. "Comparable Preference Estimates Across Time and Institutions for the Court, Congress, and President," *American Journal of Political Science* 51(3): 433-448.
http://www9.georgetown.edu/faculty/baileyma/ajps_offprint_bailey.pdf
- Schubert, Glendon. *The Judicial Mind: The Attitudes and Ideologies of Supreme Court Justices, 1946-1963*. Evanston: Northwestern University Press, 1965.

10. MODELING LAW & LEGAL DOCTRINE

THEORY

- Kornhauser, Lewis A. 1992. "[Modeling Collegial Courts II. Legal Doctrine](#)," *Journal of Law, Economics, and Organization* 8(3): 441-470.
- Gennaioli, Nicola, and Schleifer, Andrei. 2007. "The Evolution of Common Law," *Journal of Political Economy* 115: 43-68.

EMPIRICS

- Segal, Jeffrey A. 1984. "[Predicting Supreme Court Decisions Probabilistically: The Search and Seizure Cases](#)," *American Political Science Review* 78(4): 891-900. [search & seizure]
- . 1985. "[Measuring Change on the Supreme Court: Examining Alternative Models](#)," *AJPS* 29(3): 461-479. [ditto]
- . 1986. "[Supreme Court Justices as Human Decision Makers: An Individual Level Analysis of the Search and Seizure Cases](#)," *Journal of Politics* 48(4): 938-955. [ditto]
- Ignagni, Joseph. 1993. "[U.S. Supreme Court Decision-Making and the Free Exercise Clause](#)," *Review of Politics* 55(3): 511-529. [separation of Church & State]
- Kort, Fred, "Content Analysis of Judicial Opinions and Rules of Law," in Glendon Shubert (ed) *Judicial Decision-making*.
- Kastellec, Jonathan. 2007. "[The Structure of Legal Rules and the Analysis of Judicial Opinions](#)." Working paper.
- George, Tracey, and Epstein, Lee. 1992. "[On the Nature of Supreme Court Decision Making](#)," *APSR* 86(2): 323-337. [capital punishment]
- Kritzer, Herbet, and Richards, Mark. 2002. "[Jurisprudential Regimes in Supreme Court Decision Making](#)," *APSR* 96(2): 305-320. [freedom of expression cases]
- . 2003. "[Jurisprudential regimes and Supreme Court Decisionmaking: The Lemon Regime and Establishment Clause Cases](#)," *Law and Society Review* 37(4): 827-840. [separation Church]
- . 2005. "The Influence of Law in the Supreme Court's Search-and-Seizure Jurisprudence," *American Politics Research* 33(1): 33-55. [S & S]

Lax, Jeffrey and John Kastellec. 2008. "Case Selection and the Study of Judicial Politics," *Empirical Legal Studies* (forthcoming). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=951873

11. PRECEDENT AND HORIZONTAL STARE DECISIS

Rasmusen, Eric. 1994. "[Judicial Legitimacy as a Repeated Game](#)," *Journal of Law, Economics, and Organization* 10(1): 63-83.

Hansford, Thomas, and Spriggs, James. *The Politics of Precedent on the U.S. Supreme Court*. Princeton: Princeton University Press, 2008.

Kornhauser, Lewis. 1989. "An Economic Perspective on Stare Decisis," *Chicago-Kent Law Review* 65: 63-92.

Talley, Eric. 1999. "Precedential Cascades: An Appraisal," *Southern California Law Review* 73: 87-137.

Spaeth, Harold, and Segal, Jeffrey. *Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court*. Cambridge, U.K.: Cambridge University Press.

12. COURTS AND FEDERALISM

Clifford Carrubba and Christopher Zorn, "".

Jenna Bednar, William Eskridge, and John Ferejohn. 2001. "A Political Theory of Federalism," in Riley and Rakove (eds) *Constitutional Culture and Democratic Rule*.

Cameron, Charles M. 2005. "Endogenous Preferences about Courts: A Theory of Judicial State Building in the Nineteenth Century," in Katznelson and Weingast (eds), *Preferences and Situations*.

13. INCENTIVE & POLICY EFFECTS OF JUDICIAL ELECTIONS

Gordon, Sanford C., and Huber, Gregory. 2007. "The Effect of Electoral Competitiveness on Incumbent Behavior" *Quarterly Journal of Political Science*. 2: 107-138.

Canes-Wrone, Brandice, Tom Clark, and Jee-Kwang Park. 2008. "Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions." <http://www.princeton.edu/~bcwrone/nonpartisan.pdf>

14. POLITICS OF SUPREME COURT NOMINATIONS

Segal, Jeffrey A., Cameron, Charles M., and Cover, Albert D. 1992. "[A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents, and Interest Groups in Supreme Court Confirmations](#)," *American Journal of Political Science* 36(1): 96-121.

- Caldeira, Gregory A., and Wright, John R. 1998. "[Lobbying for Justice: Organized Interests, Supreme Court Nominations, and the United States Senate](#)" *American Journal of Political Science* 42(2): 499-523.
- Yalof, David. *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees*. Chicago: University of Chicago Press, 1999.
- Krehbiel, Keith. 2006. "[Supreme Court Appointments as a Move-the-Median Game](#)." Working paper.
- Moraski, Bryon J. and Shipan, Charles R. 1999. "[The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices](#)." *American Journal of Political Science* 43(4): 1069-1095.

15. COMPARATIVE AND INTERNATIONAL LAW

- Carrubba paper.
- Mark Ramseyer and Eric Rasmusen. Article try JSTOR
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy," *American Political Science Review* 96(2): 291-303.
- Staton, Jeffrey K., and Powell, Emilia J. 2008. "Domestic Judicial Institutions and Human Rights Treaty Violations," *International Studies Quarterly* 43: 291-313.