

**Princeton University
Department of Politics
Undergraduate Program
Fall 2005**

POL 320 Introduction to Judicial Politics
Jadwin A10

WF 10.00-10.50
Charles Cameron

This course provides an introduction to the political science of law and courts. The topics considered include: the impact of courts on prosperity and on economic and political freedom; when private orderings work and when they don't, and why judicial institutions replace them; the structure and manipulation of legal rules; different ways to organize legal systems and when one system is likely to work better than another; the effect of law enforcement on crime; how plea-bargaining and pre-trial settlement operate; the objectives and tactics of legal activists and interest groups; how trials and juries work; why judicial hierarchies are organized the way they are and how they work; how the U.S. Supreme Court operates, why it works that way, and with what consequences; the politics of Supreme Court nominations; the frequency and variety of conflicts between the Supreme Court, Congress, and the President; the conditions necessary for judicial independence; court curbing and judicial intimidation around the world; the conditions under which Congress delegates to courts rather than administrative agencies, with what consequences; how courts oversee the administrative state; how courts attempt to create rights, and the conditions under which they succeed or fail.

Course Requirements

Your grade will be based on the following:

1. Two Policy Memos . . . 20%
2. Supreme Court Case Study . . . 30%
3. Precept readings presentations & precept participation . . . 10%
4. Final Exam . . . 40%

Blackboard

We will use Blackboard extensively. Some of the readings will be posted there as will the lecture slides (but only after the lecture). We will also establish a rather minimal bulletin board so you can post questions about the lectures or reading material and receive a written answer. Note: **THE SYLLABUS IS SUBJECT TO CHANGE – ALWAYS CHECK BLACKBOARD TO STAY CURRENT.**

Precept Sessions

Attending one of the four precept sections is mandatory. We will use the new Sectioning Tool on Blackboard to assign precept. You will have until 5:00pm on Monday, September 19, 2005, to indicate your preference on Blackboard. We will do our best to accommodate everyone's preferences.

Please note that there are *separate* readings for the lectures and the precepts. Typically, students will present some of these readings orally in precept. Your performance in doing so, plus your other participation in precept, will determine 10% of your grade. In addition, you will present at least one of your policy memos or Supreme Court case to your precept group in a formal presentation.

Memos and Case Study

Working with two or three other members of your precept group, you will write two policy memos and a case study of Supreme Court decision making. The policy memos should each be about 4 pages in length. Each counts for 10% of your grade. The memos deal with litigation strategy and Supreme Court nominations. The Supreme Court case study should be 15-20 pages in length. You will be asked to present one of your memos or your case study in your TA Section in a formal oral presentation. These presentations should be highly polished, e.g., include Power Point slides or other materials.

Thirty percent of your grade depends on your case study so you should take it seriously and start preparing early. Half the grade on your case study will be awarded you by your fellow group members, who will fill out a detailed instrument evaluating your contribution to the project. Slackers can confidently expect retribution.

Detailed instructions for the memos and case study will be posted on Blackboard.

Final Exam

The final exam will test comprehension of the material covered in lecture, for the entire course.

Office Hours

My office hours are TBA, or by appointment. My office is Room 305 Robertson Hall, and I am always happy to see students. Nonetheless, it is a good idea to let me know in advance via email when you are coming, even during official office hours, as I am subject to interruptions that I cannot always control. Emailing will reduce the chance of undue waiting and "no shows." You can also receive answers to questions through the class bulletin board or from the preceptor. If you email me a substantive question, I will

endeavor to answer it within 3 days but cannot always guarantee a speedy turn around time.

Text Books and Books for Purchase

There is no textbook for the course as such. Some material is drawn from Walter Murphy, Herman Pritchett, and Lee Epstein *Courts, Judges, and Politics* (5th edition) (2002, McCraw Hill). We will also read the following in their entirety, which are available for purchase at the University Store. You may be able to find used copies of all of them on the Web; do not buy an earlier edition of Murphy et al. as the 5th edition differs significantly from earlier ones.

:

Edward Levi, *Introduction to Legal Reasoning* (1962, University of Chicago Press)
Lee Epstein and Jack Knight, *The Choices Justices Make* (1998, CQ Press)
David Klein, *Making Law in the United States Courts of Appeals* (2001, Cambridge UP)
Lee Epstein and Jeffrey A. Segal, *Advice & Consent: The Politics of Judicial Appointments* (2005, Oxford University Press)

In addition, we will read a substantial portion of the following book, which is also available for purchase (optional to buy—it is also on reserve in the Library):

Walter Murphy, C. Herman Pritchett, and Lee Epstein, *Courts, Judges, and Politics* 6th ed. (2005, McGraw-Hill)

And, we will read portions of the following, which are all available on reserve at the Library:

David Yalof, *In Pursuit of Justices* (1999, University of Chicago Press)
Gerald Rosenberg, *The Hollow Hope* (1992, University of Chicago Press)
Charles Epp, *The Rights Revolution* (1998, University of Chicago Press)
Georg Vanberg, *The Politics of Constitutional Review in Germany* (2005, Cambridge University Press)

Other Readings

We will be reading numerous articles and books chapters beyond those listed above. Some of these are available on e-reserve through the Library; others are on reserve in hard copy, and still others are posted under Blackboard's Course Materials section. Each reading is labeled accordingly.

Class Schedule

	Lectures	Precepts
Week 1	Why Study Courts?	No precept
Week 2	Why are there Courts?	Private Orderings

	Judicial Preferences & Legal Rules	
Week 3	Judicial Institutions Litigants	NAACP-Legal Defense Fund Case Study (Policy memo)
Week 4	Settlement & Plea Bargaining Adversarial Proceedings	Oxycotin Case Study (Policy memo)
Week 5	Juries Judicial Teamwork	View jury tapes
Week 6	Principals & Agents More Principals & Agents	Judge Coffin & the 1 st Circuit
Week 7	Discovering Rules Catch Up Day (no lecture)	Simulation on judicial auditing
Week 8	Fall Recess Week (No class 11/2 & 11/4)	No precepts
Week 9	Collegial Courts (1) Collegial Courts (2)	Case Presentations
Week 10	Collegial Courts (3) Collegial Courts (4)	Case Presentations
Week 11	Catch up day (no class) Thanksgiving (no class)	No precepts
Week 12	Supreme Court Nominations (1) Supreme Court Nominations (2)	Nomination policy memos
Week 13	Judicial Independence (1) Judicial Independence (2)	
Week 14	SOP Games Creating Rights	

Part I: Foundations

1. Why Study Courts? 1 9/16 (Friday)
2. Why are there Courts? 9/21
3. Judicial Preferences & Legal Rules 9/23
4. Judicial Institutions 9/28

Part II: The Structure of Adjudication

5. "Bad Men," Litigants, and Legal Disputes 9/30
6. Settlement & Plea Bargaining 10/5
7. Adversarial and Inquisitorial Proceedings 10/7
8. Juries 10/12
9. Disputes & Teamwork 10/14
10. Disputes & Teamwork/Agents 10/19
11. More Disputes & Agents 10/21
12. Discovering Rules 10/26
 - Catch Up Day: 10/28 (No class)

Part III. Decision Making on Collegial Courts

- Fall Recess Week (No class 11/2 & 11/4)
13. Collegial Courts (1): Bargaining & Voting on the Supreme Court 11/9
 14. Collegial Courts (2): More Bargaining 11/11
 15. Collegial Courts (3): Opinion Assignment & Cert 11/16

16. Collegial Courts (4): More Opinion Assignment & Cert 11/18

- Catch Up Day 11/23 (No Class)

Part IV: Courts Within Government

- Thanksgiving 11/25 (No class)
17. The Politics of Supreme Court Nominations (1) 11/30
18. The Politics of Supreme Court Nominations (2) 12/2
19. Judicial Independence & Judicial Review 12/7
20. Judicial Independence & Judicial Review 12/9
21. Separation of Powers Games 12/14
22. Creating Rights 12/16

Reading for Lectures

MPE6 = Walter Murphy, Herman Pritchett, and Lee Epstein *Courts, Judges, and Politics* (6th edition) (2005, McGraw Hill).

1. Introduction: Why Study Courts? F

The institutional matrix of prosperity and liberty: some empirics

Robert Barro, "Democracy and the Rule of Law," pp. 209-231 in Bruce Bueno de Mesquita and Hilton Root (eds), *Governing for Prosperity* (2000). [e-reserve]
La Porta et al. 2004. "Judicial Checks and Balances," *Journal of Political Economy* 112(2):445-470. [Blackboard Course Materials]

Optional

Robert Dahl, "Decision-making in a Democracy: The Supreme Court as a National Policy Maker," pp. 67-70 in MPE6.
Jonathan Casper, "The Supreme Court and National Policy Making," pp. 70-73 in MPE6.

2. Why Are There Courts? W

The institutional matrix of prosperity and liberty: some theory; how private orderings work, how they fail; role of institutions; restraining government

Kenneth Shepsle, "Discretion, Institutions, and the Problem of Government Commitment." In Bordieus and Coleman, *Social Theory for a Changing Society* (1991, Westview): pp.245-263. [e-reserve]

3. Legal Rules and Judicial Preferences F

Basics of law and courts; where's the preferences?; and where's the politics?

Edward Levi, *Introduction to Legal Reasoning* (1962) (entire)
Benjamin Cardozo, "The Nature of the Judicial Process" pp. 30-34 in MPE6
Richard Posner, "What Do Judges Maximize?" pp. 109-144 in Posner *Overcoming Law* (1995) [e-reserve]
Martha Minow, *Making All the Difference* (1990, Cornell University Press), Chapter 2, pp.49-78. [e-reserve]

Note:

If you want to supplement with a textbook presentation read:

MPE, “Instruments of Judicial Power,” pp. 299-310 in MPE6

MPE, “Precedents and Legal Reasoning,” pp. 438-449 in MPE6

Optional

Epstein, Lee, Daniel E. Ho, Gary King, & Jeffrey A. Segal. 2005. *The Effect of War on the Supreme Court*. NYU Law Review 80 (1): 1-116.

Lawrence Baum, *The Puzzle of Judicial Behavior*

4. Judicial Institutions W

Different ways to organize legal systems, and their trade-offs

Martin Shapiro, *Courts: A Comparative and Political Analysis*, Chapter 1-3, 5

MPE, “Judicial Organization,” pp. 77-100 in MPE6

Merryman, *Civil Law Tradition*, pp. TBA [e-reserve]4 in MPE6

Alexis de Tocqueville, Exert from *Democracy in America*, pp. 24-27 in MPE6

Optional

Simeon Djankov, et al. 2003. “The New Comparative Economics,” *Journal of Comparative Economics* 31(4):595-619.

5. Litigants and Disputes F

“Bad man” theory of the law; deterrence of crimes; litigation strategy of interest groups and firms

Oliver W. Holmes Jr., “The Path of the Law,” *Harvard Law Review* 110(5):991-1009.

[Blackboard Course Materials]

Kenneth I. Wolpin. 1978. “An Economic Analysis of Crime and Punishment in England and Wales, 1894-1967.” *Journal of Political Economy* 86(5):815-840

[Blackboard Course Materials]

MPE6 “The Strategies of Interest Groups,” MPE6 pp. 268-272

Marc Galanter, “Why the Haves Come Out Ahead,” selection on pp. 285-291 in MPE6

View online video of “Fish Story” from NewsHour with Jim Lehrer, available at:

<http://pbs-newshour.virage.com/cgi-bin/visearch?user=pbs-newshour&template=template.html&query=salmon&keywords=salmon&category=blank&submit=Search>

6. Settlement & Plea Bargaining

Settlement and plea bargaining; role of incomplete information

Austin Sarat and William Felstiner, “Law and Strategy in the Divorce Lawyer’s Office,” pp. 215-222 in MPE5

F. Lee Bailey, “The Defense Never Rests,” pp. 240-245 in MPE6

Thomas W. Church. 1995. “Plea Bargaining and Local Legal Culture,” in Lee Epstein (ed.), *Contemplating Courts*, pp. 132-154. Washington, DC: CQ Press. [e-reserve]

7. Advocates & Adversarial Proceedings

Properties of adversarial proceedings; lawyers

MPE6 Chapter 5 (entire)

Tom R. Tyler. 1988. "What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures." *Law and Society Review* 22(1):103-136.

[Blackboard Course Materials]

8. Juries

Role of juries in American courts; demographics and juries

MPE, "Fact-finding in the Courts," pp. 381-396 in MPE6

Clarence Darrow, "How to Pick a Jury," pp. 410-412 in MPE6

Randall Kennedy. 1997. *Race, Crime, and the Law*. New York: Vintage Books., chapter 6 [e-reserve]

Linda Kerber. 1998. *No Constitutional Right to be Ladies*. New York: Hill and Wang., chapter 4 "Woman is the Center..." pp. 124-220. [e-reserve]

Optional

Milton Heumann, Brian K. Pinaire, and Tom Clark. 2005. "Beyond the Sentence: Public Perceptions of Collateral Consequences for Felony Offenders." *Criminal Law Bulletin* 41(1):24-46.

9. Disputes & Judicial Teamwork

Lewis A. Kornhauser. 1995. "Adjudication by a Resource-Constrained Team: Hierarchy and Precedent in a Judicial System." *Southern California Law Review* 68(6): 1605-1630 [Blackboard Course Materials]

10. Disputes & Teamwork/Agents

Jeffrey A. Segal, Donald R. Songer, and Charles M. Cameron. 1995. "Decision Making on the U.S. Courts of Appeals," in Lee Epstein (ed.), *Contemplating Courts*, pp. 227-246. Washington, DC: CQ Press. [e-reserve]

11. Disputes & Agents

Tournaments, auditing, en banc, whistle-blowing. Empirical defiance results?

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(7):2155-2176. [Blackboard Course Materials]

Optional

Charles M. Cameron, Jeffrey A. Segal and Donald Songer. 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.

12. Discovering Rules

David Klein, *Making Law in the United States Courts of Appeals* (2001).

13. Collegial Courts I: Bargaining

Lee Epstein and Jack Knight, *The Choices Justices Make* Chapters 1 & 2

Optional

Jeffrey R. Lax and Charles M. Cameron. 2005. "Beyond the Median Voter: Bargaining and Law in the Supreme Court." Working paper, available online at

<http://www.princeton.edu/~ccameron/MVB%202005%20regular%20version.pdf>

Forest Maltzman, James Spriggs, and Paul Wahlbeck, *Crafting Law on the Supreme Court*

14. Collegial Courts II: More Bargaining

Lee Epstein and Jack Knight, *The Choices Justices Make* Chapters 3 & 4

15. Collegial Courts III: Assignment & Cert

Lee Epstein and Jack Knight, *The Choices Justices Make* Chapter 6

Optional

Forest Maltzman, James Spriggs, and Paul Wahlbeck, *Crafting Law on the Supreme Court*

16. Collegial Courts IV: Diversity and Its Effects

Diversity and court composition

Sean Farhang and Gregory Wawro. 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. [Blackboard Course Materials]

Optional

Chris C. Bonneau. 2001. "The Composition of State Supreme Courts: 2000." *Judicature* 85(1):26-31.

17. The Politics of Supreme Court Nominations (1)

Segal and Epstein, *Advice & Consent: The Politics of Judicial Appointments* (2005, Oxford University Press), pp. TBA

18. The Politics of Supreme Court Nominations (2)

Mark Gitenstein. 1992. *Matters of Principle: An Insider's Account of America's Rejection of Robert Bork's Nomination to the Supreme Court*. New York: Simon & Schuster., pp. TBA [on reserve at the Library]

19. Judicial Independence & Judicial Review (1)

MPE, "Limitations on Judicial Power," pp. 329-344 in MPE6
Gerald Rosenberg, "Judicial Independence and the Reality of Political Power," *Review of Politics* 54(3):369-88 (1992) [Blackboard Course Materials]
Stuart S. Nagel, "Court-Curbing Periods in American History," *Vanderbilt Law Review* 18(3):925-944 (1965) [Blackboard Course Materials]
John Ferejohn. 1999. "Independent Judges, Dependent Judiciary: Explaining Judicial Independence." *Southern California Law Review* 72(2):353-384. [Blackboard Course Materials]

Optional

Whittington, Keith E. 2003. "Legislative Sanctions and the Strategic Environment of Judicial Review." *I-Con: The International Journal of Constitutional Law* 1(3):446-474.

20. Judicial Independence & Judicial Review (2)

Role of public opinion/support

Georg Vanberg. 2005. *The Politics of Constitutional Review in Germany*, chapters 2 and 5 (look over chapters 3 and 4)
Gibson, James, Gregory Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92(2):343-358. [Blackboard Course Materials]

21. SOP Games

Congressional delegation to courts rather than administrative agencies, and judicial supervision of administrative agencies

Sean Frahang, *The Litigation State*, pp. TBA [e-reserve]
Martin Shapiro, *Who Guards the Guardians?* pp. 107-127 [e-reserve]

22. Creating Rights

Charles Epp, *The Rights Revolution*, Chapters 1-4 plus any non-US chapter.
Gerald Rosenberg, *The Hollow Hope* (1992, University of Chicago Press). Either Chapters 3 & 4 OR Chapters 6 & 7 [e-reserve]
Michael McCann, review of Rosenberg, pp. 729-738 in MPE

Readings For Precept Sections

Week 1 (9/15)

No precepts this week.

Week 2 (9/21 & 9/23)

Lectures 2 & 3. The precepts will focus on norms vs. institutions.

Choose one or two from the following:

Malinowski, *Crime and Custom in Savage Society* [reserve at Library]

Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 *Journal of Legal Studies* 115 (1992) [Blackboard Course Materials]

Ellickson, *Order Without Law: How Neighbors Settle Disputes*, 1991. [reserve at Library]

Gambetta, Diego (1993) *The Sicilian Mafia: The Business of Private Protection* (Cambridge, MA: Harvard University Press). [reserve at Library]

Lord Bryce, "Primitive Iceland," in *Studies in History and Jurisprudence*. New York: Oxford University Press, 1901, pp. 263-300. [Blackboard Course Materials]

Avner Greif, *Institutions and the Path to Modern Economy: Lessons from Medieval Trade*, chapter 3 "Private-Order Contract Enforcement Institutions: The Maghribi Traders Coalition", available online at http://www-econ.stanford.edu/faculty/Greif_Institutions/GreifBook.html

Week 3 (9/28 & 9/30)

Lecture 4 & 5. The precepts will focus on interest group strategies during litigation.

Jack Greenberg, *Crusaders in Court* (1994, Basic Books), Chapters 7, 9, and 10, pp.85-92; 107-132 [e-reserve]

Constance Baker Motley *Equal Justice Under Law* (1998, Farrar, Straus, and Giroux), Chapter 3 "Prelude to *Brown*," pp.61-86. [e-reserve]

Mark Tushnet *Legal Strategy of NAACP* (2005, University of North Carolina Press), pp. TBA

Week 4 (10/5 & 10/7)

Lectures 6 & 7. The precepts will focus on litigants, settlement, and litigation.

"Woodrow Wilson School Case Study : Taking on a Pharmaceutical Giant: The State of West Virginia versus Purdue Pharma" [Blackboard Course Materials]

Week 5 (10/12 & 10/14)

Lectures 8 & 9. The precepts will focus on juries.

No readings: view jury tapes.

Week 6 (10/19 & 10/21)

Lectures 10 & 11. Judicial hierarchy.

The precept will focus on appellate courts.

Coffin, *The Ways of a Judge* [e-reserve]

Week 7 (10/26 & 10/28)

Lecture 12. Discovering rules.
Simulation. Details to follow.

Week 8 (11/2 & 11/4)

Fall break week, no precepts

Week 9 (11/9 & 11/11)

Lectures 13 & 14. Case Presentations on the U.S. Supreme Court.

Week 10 (11/16 & 11/18)

Lectures 15 & 16. More case presentations on U.S. Supreme Court.

Week 11 (11/23 & 11/25)

Thanksgiving, no precepts.

Week 12 (11/30 & 12/2)

Lectures 17 & 18. Supreme Court nominations.
Present memos on SC nominations

Week 13 (12/7 & 12/9)

Lectures 19 & 20. Court curbing around the world & in the U.S.

Mark Ramseyer and Eric Rasmusen, "Why Are Japanese Courts So Conservative in Politically Charged Cases?" *American Political Science Review* 95:331-344 (2001) [Blackboard Course Materials]

John DeFigueiredo and Emerson Tiller, "Congressional Control of the Courts: Analysis of Expansion of the Federal Judiciary," *Journal of Law and Economics* 39:435-462 (1996) [Blackboard Course Materials]

Walter F. Murphy, *Congress and the Court: A Case Study in the American Political Process* (1962, University of Chicago Press). [reserve at Library]

William Leuchtenberg (1966) "The Origins of Franklin D. Roosevelt's 'Court-Packing' Plan," *Supreme Court Review* 1966, pages 347-400. [Blackboard Course Materials]

Other readings, TBA

Week 14 (12/14 & 12/16)

Lectures 21 & 22. Creating rights.
More Rosenberg. Plus maybe the essay on Brown.