

**Princeton University
Department of Politics
Undergraduate Program
Fall 2006**

POL 320 Judicial Politics
Wallace 002

WF 11.00-11.50
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 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. During 2006, the course will not cover the politics of Supreme Court nominations, as I will offer a seminar on this subject in the Spring.

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 & 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 two 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 18, 2006, 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

You will write two policy memos (from a choice of three), involving judicial politics. In addition, you will work with two to three members of your precept to write a detailed 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 Supreme Court case study should be 15-20 pages in length. You will be asked to present one of your memos and your group will present your case study in your precept 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. Please note the following: one-third of 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. The evaluation instrument is posted on Blackboard for your review. 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 and readings, 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 three 3 days.

Text Books and Books for Purchase

The textbook for the course is Charles Cameron, *Analyzing Courts: An Introduction to the New Political Science of Law and Judicial Institutions* – which unfortunately continues to exist only as power point slides. These are posted to BlackBoard and will be used extensively during class. The readings for many classes are supplemental to the slides, which contain the critical material.

You may wish to purchase the following:

- Martha Derthick, *Up in Smoke* (2005, CQ Press)
- Charles Epp, *The Rights Revolution* (1998, University of Chicago Press)
- Lee Epstein and Jack Knight, *The Choices Justices Make* (1998, CQ Press)
- Jonathan Harr, *A Civil Action* (1995, Vintage)
- Edward Levi, *Introduction to Legal Reasoning* (1962, University of Chicago Press)
- William S. Miller, *A Primer on American Courts* (2005, Pearson Longman)

These have been ordered at the U-Store.

Other Readings

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

Class Schedule

	Lectures	Precepts
Week 1	1 Why Study Courts?	No precept
Week 2	2 Why are there Courts? 3 Judicial Preferences & Legal Rules	Private Orderings
Week 3	4 Judicial Institutions 5 Litigants	NAACP-Legal Defense Fund Case Study (Policy memo)
Week 4	6 Settlement & Plea Bargaining 7 Adversarial Proceedings	View jury tapes
Week 5	8 Juries 9 Advocates & Law Firms	A Civil Action
Week 6	10 Judicial Teamwork 11 Principals & Agents	Judge Coffin & the 1 st Circuit
Week 7	12 More Principals & Agents Catch Up Day (no lecture) (10/27)	Simulation on judicial auditing

Week 8	Fall Recess Week (No class 11/1 & 11/3)	No precepts
Week 9	14 Collegial Courts (1) 15 Collegial Courts (2)	Case Presentations
Week 10	16 Collegial Courts (3) 17 Collegial Courts (4)	Case Presentations
Week 11	Catch up day (no class) Thanksgiving (no class)	No precepts
Week 12	19 AGs & Adversarial Legalism 20 Politics of Administrative Law	Oxycotin Case Study (Policy memo)
Week 13	21 Judicial Independence (1) 22 Judicial Independence (2)	Court-curbing
Week 14	23 Creating Rights 24 Evaluating the Rights Revolution	No precepts

Part I: Foundations

1. Why Study Courts? 9/15 (Friday)
2. Why are there Courts? 9/20
3. Judicial Preferences & Legal Rules 9/22
4. Judicial Institutions 9/27

Part II: The Structure of Adjudication

5. "Bad Men," Litigants, and Legal Disputes 9/29
6. Settlement & Plea Bargaining 10/4
7. Adversarial and Inquisitorial Proceedings 10/6
8. Juries 10/11
9. Advocates & Law Firms 10/13
10. Judicial Teamwork 10/18
11. Principal & Agents 10/20
12. More Principals & Agents 10/25
 - Catch Up Day (no class) 10/27

Part III. Decision Making on Collegial Courts

- Fall Recess Week (No class 11/1 & 11/3)
13. Collegial Courts (1): Introduction to Bargaining 11/8
 14. Collegial Courts (2): More Bargaining 11/10
 15. Collegial Courts (3): Opinion Assignment & Cert 11/15
 16. Collegial Courts (4): More Opinion Assignment & Cert 11/17
 - Catch Up Day 11/22 (No Class)

Part IV: Courts Within Government

- Thanksgiving 11/24 (No class)
17. Activist AG's and Adversarial Legalism 11/29
 18. Politics of Administrative Law 12/1
 19. Judicial Independence & Judicial Review 12/6
 20. Judicial Independence & Judicial Review 12/8
 21. Separation of Powers Games 12/13
 22. Creating Rights 12/15

Reading for Lectures

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 Walter F. Murphy, C. Herman Pritchett, Lee Epstein, Jack Knight (eds), *Court, Judges, & Politics* (2006). [e-reserve]
Jonathan Casper, "The Supreme Court and National Policy Making," pp. 70-73 in Walter F. Murphy, C. Herman Pritchett, Lee Epstein, Jack Knight (eds), *Court, Judges, & Politics* (2006). [e-reserve]

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, 104 pages)
Richard Posner, "What Do Judges Maximize?" pp. 109-144 in Posner *Overcoming Law* (1995) [e-reserve]

Recommended:

Martha Minow, *Making All the Difference* (1990, Cornell University Press), Chapter 2, pp.49-78. [e-reserve]
Epstein, Lee, Daniel E. Ho, Gary King, & Jeffrey A. Segal. 2005. "The Supreme Court During Crisis." *NYU Law Review* 80 (1): 1-116. [Blackboard Course Materials]

Optional:

Lawrence Baum, *The Puzzle of Judicial Behavior*

4. Judicial Institutions W

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

Miller, Chapters 1 and 2

Merryman, *Civil Law Tradition* [e-reserve]

Optional

Simeon Djankov, et al. 2003. "The New Comparative Economics," *Journal of Comparative Economics* 31(4):595-619. [Blackboard Course Materials]

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]

Miller, Chapter 3

Listen to NPR story on the Christian Legal Defense Fund

<http://www.npr.org/templates/story/story.php?storyId=4633563>

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. 229-236 in Walter F. Murphy, C. Herman Pritchett, Lee Epstein, Jack Knight (eds), *Court, Judges, & Politics* (2006). [e-reserve]

7. Adversarial Proceedings

Properties of adversarial proceedings; lawyers

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

Clarence Darrow, "How to Pick a Jury," pp. 410-12 in Walter F. Murphy, C. Herman Pritchett, Lee Epstein, Jack Knight (eds), *Court, Judges, & Politics* (2006). [e-reserve]

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]

9. Advocates & Law Firms

Note: A *Civil Action* is due in precept this week.

10. 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]

11. Principals & Agents

Tournaments, auditing, en banc, whistle-blowing.

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]

Cameron, Epstein, Segal, and Westerland, "Strategic Defiance" [Blackboard]

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. (rather difficult) [Blackboard Course Materials]

12. More Principals & Agents

Tom Clark, "Principal-Agent Theory of En Banc Review" [Blackboard]

13. Catch-up Day: No Lecture

14. Collegial Courts I: Bargaining

Lee Epstein and Jack Knight, *The Choices Justices Make* Chapters 1 & 2
Miller, Chapter 5

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*

15. Collegial Courts II: More Bargaining

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

16. 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*

17. 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]

18. Catch-up Day: No Class

19. Attorneys General and Adversarial Legalism

Derthick, *Up in Smoke*, pages TBA
Michael Vu, *Senior Thesis*, pages TBA

20. Politics of Administrative Law

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

Sean Frahang, *The Litigation State*, Chapter 3 [Blackboard Course Materials]
Martin Shapiro, *Who Guards the Guardians?* pp. 107-127 [e-reserve]
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>

21. Judicial Independence & Judicial Review (1)

Tom S. Clark, "Institutional Hostility and Judicial Independence," Princeton University working paper [Blackboard Course Materials]
Gerald Rosenberg, 1992. "Judicial Independence and the Reality of Political Power," *Review of Politics* 54(3):369-88. [Blackboard Course Materials]
Stuart S. Nagel, 1965. "Court-Curbing Periods in American History," *Vanderbilt Law Review* 18(3):925-944. [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. [Blackboard Course Materials]

22. Judicial Independence & Judicial Review (2)

Role of public opinion/support

Georg Vanberg. 2000. "Establishing Judicial Independence in West Germany: The Impact of Opinion Leadership and the Separation of Powers." *Comparative Politics* 32(3): 333-53. [Blackboard Course Materials]

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]

23. Creating Rights

Charles Epp, *The Rights Revolution*, Chapters 1-4 plus any non-US chapter.

24. Evaluating the Rights Revolution

Gerald Rosenberg, *The Hollow Hope* (1992, University of Chicago Press). Chapter 3 [e-reserve]

Michael McCann, "Review of The Hollow Hope," pp. 743-51 in Walter F. Murphy, C. Herman Pritchett, Lee Epstein, Jack Knight (eds), *Court, Judges, & Politics* (2006). [e-reserve]

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 book or two articles 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. Available online at:

<http://www.alexanderstreet4.com/cgi-bin/asp/bltc/getvolume.pl?S8151>

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.
View jury tapes.

Week 5 (10/12 & 10/14)

Lectures 8 & 9. The precepts will focus on juries.
A Civil Action

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. More P& A.
Simulation. Details to follow.

Week 8 (11/2 & 11/4)

Fall break week, no precepts

Week 9 (11/9 & 11/11)

Lectures 14 & 15.
Case Presentations on the U.S. Supreme Court.

Week 10 (11/16 & 11/18)

Lectures 16 & 17.
More case presentations on U.S. Supreme Court.

Week 11 (11/23 & 11/25)

Thanksgiving, no precepts.

Week 12 (11/30 & 12/2)

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

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

Other readings, TBA

Week 13 (12/7 & 12/9)

Lectures 21 & 22. Supreme Court nominations.

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]

Week 14 (12/14 & 12/16)

No precepts.