

Politics 423
Seminar in American Politics: Politics of Supreme Court Nominations
Princeton University
Undergraduate Program
Spring 2007

Thursday 1:30 - 4:20 pm
Robertson 006

Charles Cameron

This course studies the politics of Supreme Court nominations not only for their intrinsic interest but as a vehicle for understanding *separation-of-powers politics* and the *new American politics*.

Separation-of-Power Politics

How do the different branches of government interact to create public policy? This is the subject of separation-of-power politics. Using Supreme Court nominations from FDR forward, we will study how presidents pick nominees, how advocates manipulate the hearings in the Judiciary Committee, how and why the media cover nominations (and why coverage can be biased), how interest groups mobilize and counter-mobilize, how presidents “go public” on behalf of nominees, how citizens learn about nominees and how mass opinion forms (or does not), and why senators cast their votes for or against nominees. We will also consider how and why justices leave the Court and what difference it makes who sits on the Supreme Court. Finally, we will consider how well the selection process works.

Figure 1 indicates eight processes in Supreme Court nominations. We will study each. .

The New American Politics

A recurrent theme in the course is the emergence and operation of the “new American politics.” By “NAP” I mean:

- The growth of government, including judicial power
- The ideological polarization of American political elites with an accompanying deficit in representation

- The rise of professionalized interest groups and the institutionalization of cause advocacy
- The increased incidence of divided party government
- The media-ization of American Politics
- The expansion and consolidation of the plebiscitary, direct action presidency

Supreme Court nominations afford a rich site for studying how these developments occurred and how they affect American politics today.

Format of Classes

During Weeks 2 and 3, we will read and discuss background material on separation-of-powers-politics and the new American politics. We will also introduce SC nominations and consider what difference they make for American public policy.

Then, for Classes 4 – 11, each class will follow the following format.

1. Discuss key works on the week's SOP politics topic (e.g., congressional investigations, media bias, presidential proposal power)
2. Discuss selected social science on the week's topic as applied to SC nominations
3. Student presentation of one or more SC case studies, highlighting the week's topic.
4. Discuss progress with research papers.

Grading & Your Responsibilities

Your grade has three components:

1. Class participation (10%)
2. Selection and Presentation of an in-class case study (20%)
3. Research paper (70%), including peer evaluation if a group project

Class Participation

This is a seminar and your active and thoughtful participation is required.

Case Study

The case study literature on Supreme Court nominations is voluminous and in some cases truly excellent. It is extremely helpful to read these case studies in tandem with social scientific studies so you have a clear picture in your mind of what we wish to explain. Therefore, consulting with me, you will pick a case for the class to study, formulate study questions, and lead an in-class discussion. The discussion and case should illustrate the week's topic, e.g., interest group mobilization or congressional hearings. The selected case materials, the study questions, and the discussion should address what the key elements of the case appear to be, what the systematic social science seems to get right, what it seems to get wrong, what it overlooks, and what new research might be interesting and useful.

Research Papers

You will write an original research paper on the politics of Supreme Court nominations. I will suggest a number of feasible and important research topics; I am open to other suggestions as well. Papers can be written individually but I encourage students to work together to write a more ambitious paper than they could manage individually. In this case, I will grade the jointly authored paper and administer a peer evaluation instrument; the grade on the research paper will reflect both components.

Schedule of Classes

Class 1. Introduction	2/8
Class 2. Separation-of-Power Politics and the New American Politics	2/15
Class 3. Overview of SC Nominations, & What Difference Do They Make?	2/22
Class 4. Leaving the Court -- Strategic & Otherwise	3/1
Class 5. Presidential Choices & Proposal Power	3/8
Class 6. Interest Group Mobilization	3/15
No Class (Spring Break) 3/22	
Class 7. Going Public and the Bully Pulpit	3/29
Class 8. Congressional Investigations	4/5
Class 9. The Media & Political Bias	4/12
Class 10. Citizens and the Dynamics of Opinion Holding	4/19
No class (work on research papers) 4/26	
Class 11. Voting in the Senate	5/3

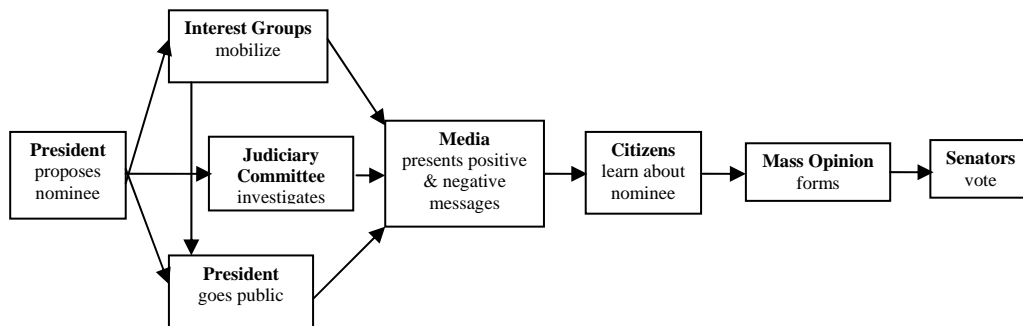


Figure 1. Eight processes in Supreme Court nominations. During weeks 3-11 we will consider each process in turn, as well as departures from the Court.

Readings

Week 1. Introduction

No reading. Course overview.

Week 2 Separation-of-Power Politics and the New American Politics

What is SOP Politics? The (Conditions)-Structure-Conduct-Performance paradigm. SOP Politics and the New American Politics. SC nominations as a laboratory for studying SOP politics. Eight (Nine) Processes in SC nominations politics.

Charles Cameron, "Divided Government and Interbranch Bargaining" in *Veto Bargaining: Presidents and the Politics of Negative Power* (2000). Basic logic of the American design.

Rui DeFigueiredo, Tanya Jacobi, and Barry Weingast, "The New Separation of Powers Approach to American Politics," pp. 199-222 in *The Oxford Handbook of Political Economy* (2006). A more advanced approach – try to understand but don't be worried if you don't understand everything.

Nolan McCarty, Keith Poole, and Howard Rosenthal, "The Choreography of American Politics" and "Polarized Politicians" in *Polarized America: The Dance of Ideology and Unequal Riches* (2006). The wing-nuts have taken over American politics.

Morris P. Fiorina, Samuel J. Abrams, Jeremy C. Pope, "A 50:50 Nation? Red and Blue State People are Not That Different" in *Culture Wars? The Myth of Polarized America* (2006). But not the American people.

Week 3: Overview over Supreme Court Nominations & What Difference Do They Make?

A Brief History of Modern SC Nominations. Theories of Decision making on the US Supreme Court. (MVT vs non-MVT approaches). The SC and its governing coalitions. The policy value of a nominee.

Overview of nominations

Keith E. Whittington, "Presidents, Senates, and Failed Supreme Court Nominations" (March 10, 2006). U of Texas Law, Public Law Research Paper No. 103.

Richard D. Friedman. 1983. "The Transformation in Senate Response to Supreme Court Nominations: From Reconstruction to the Taft Administration and Beyond," *Cardozo Law Review* 5: 1-95.

What Difference Do They Make?

Jack Balkin and Sanford Levinson. 2006. "The Processes of Constitutional Change: From Partisan Entrenchment to the National Security State," *Fordham Law Review* 75(2): 101-145. (partisan entrenchment thesis). Presidents try to stack the courts.

Montgomery N. Kosma. 1998. "Measuring the Influence of Supreme Court Justices," *Journal of Legal Studies* 27(2): 333-372.

Charles Cameron. 2007. "Presidential 'Mistakes' on the Supreme Court: Treacherous Justices or Inept Executives?" Manuscript WWS. Nominating more carefully results in more faithful agents.

Optional

Bruce Ackerman. 1988. "Transformative Nominations," *Harvard Law Review* 101:1164—1184. Some nominations are more consequential than others (a law professor's view). Downloadable at JSTOR.

Michael Comiskey. 2004. *Seeking Justices: The Judging of Supreme Court Nominees*. Chapter 7, "Court Packing and an Aberrant Court," pp. 150-181. How successful were conservatives in packing the Rehnquist Court? A review of decisions.

Week 4: Leaving the Court -- Strategic & Otherwise

Death, disease, retirement, scandals, ambition.

Ross Stolzenberg and James Lindgren, "Politicized Departures from the United States Supreme Court," working paper, University of Chicago Department of Sociology and Northwestern Law School, October 2006.

Crowe, Justin and Karpowitz, Christopher, "Where Have You Gone, Sherman Minton? The Decline of the Short-Term Supreme Court Justice" (April 2006). Princeton Law and Public Affairs Working Paper No. 06-014

David Atkinson, *Leaving the Bench: Supreme Court Justices at the End*. Chapter 1 "Why Do They Stay or Leave?" Skim the material on any justices you find interesting (some of the material is rather macabre)

Cases (suggestion)

Artemus Ward. 2000. "The Tenth Justice: The Retirement of William O. Douglas," *Journal of Supreme Court History* 25(3): 296-312. See also Atkinson's book

John W. Dean, 2001. *The Rehnquist Choice: The untold story of the Nixon appointment that redefined the Supreme Court*, "Introduction: The Backstory" (on Nixon's attempts to create vacancies), p. 1-28.

NOTE: Students should commit to research topics by this class. We will spend some time in class discussing the topics.

Week 5. Presidential Choices and Proposal Power

Presidential Objectives. Presidential proposal power and SOP politics. Transformative moments on the US Supreme Court. Capitalizing on transformative moments, and failing to do so. The cost of failure. Selecting nominees in the shadow of opposition.

General

Charles Cameron. 2006. "The Political Economy of the U.S. Presidency," pp. 241-255 in Weingast and Wittman *The Oxford Handbook of Political Economy*.

Social Science on SC Nominations

David Yaloff. 1999. *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees*. Chapters 2 through 6.

Christine Nemacheck, *Strategic Selection: Presidential Nomination of Supreme Court Justices from Herbert Hoover through George W. Bush*, (when available)

Christine Nemacheck and Paul Wahlbeck. 1998. "The President's Choice of a Supreme Court Nominee," paper presented at the 1988 Midwest Political Science Association Meeting.

Barbara Perry. 1991. "Religion: A "Catholic Seat"?" A "Representative" Supreme Court? *The Impact of Race, Religion, and Gender on Appointments*. p. 19-53.

Optional (these are hard reading, require some game theory)

Charles Stewart and Lemieux, "A Theory of Supreme Court Nominations," MIT Working Paper 1991.

Bryon J. Moraski; Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices," *American Journal of Political Science*, 43(4): 1069-1095.

Keith Krehbiel, 2006. "Supreme Court Appointments as a Move-the-Median Game,"
Research Paper Series, Stanford Graduate School of Business, Research Paper
1942.

Case study (suggestions)

John Dean, *The Rehnquist Choice*.

Stephen Wermiel. 1994. "The Nomination of Justice Brennan: Eisenhower's Mistake? A
Look at the Historical Record," *Constitutional Commentary* 11: 515-537.

Week 6. Interest Group Mobilization

Interest group power in American politics. Mobilization and counter-mobilization in SC
nominations. A model. Tests. Conclusion.

General

Theda Skocpol. 2003. *Diminished Democracy: From Membership to Management in
American Civic Life*. From mass membership to professionalized advocacy.

Thomas Gais, and Jack Walker. 1991. "Pathways to Influence in American Politics," pp.
103-121 in Walker's *Mobilizing Interest Groups in America: Patrons, Professions,
and Social Movements*.

Stephen Ansolabehere, John de Figueiredo, James M. Snyder, Jr, 2002. "Why Is There So
Little Money in U.S. Politics?"

On SC Nominations

Gregory Caldeira and John Wright. 1988. "Lobbying for Justice: The Rise of Organized
Conflict in the Politics of Federal Judgeships," *American Journal of Political
Science* 42(2)

Michaela Weber, *In the Interest of Justice: A Study of Twentieth Century Supreme Court
Nominations Reveals the New Role of Interest Groups in American Politics*," Princeton
Senior Thesis 2006.

Martin Shapiro, 1990. "Interest Groups and Supreme Court Appointments,"
Northwestern Law Review 84: 935-961.

Case Study

The People Rising: The Campaign Against the Bork Nomination. Bork case study book

Week 7. Going Public and the Bully Pulpit

Presidential rhetoric and American politics. The history of going public during SC
nominations. The timing of going public. A model of timing. Decomposing the fixed
effects. The changed nature of presidential politics.

General

Brandice Canes-Wrone. Chapter 2 and 3 from *Who Leads Whom? Presidents, Policy, and
the Public* (The University of Chicago Press, 2006.)

On SC Nominations

Timothy Johnson and Jason Roberts. 2004. "Presidential Capital and Supreme Court Nomination Process," *Journal of Politics* 66(3): 663-683.

Ross Williams, *Presidents, Supreme Court Nominations, and the Bully Pulpit*, Princeton Senior Thesis 2006.

Case Study (suggestion)

Mark Gitenstein. Selections on Judge Robert Bork from *Matters of Principle: An insider's account of American's rejection of Robert Bork's nomination to the Supreme Court* (New York: Simon & Schuster, 1992.) From the index: read all the references on Ronald Reagan.

Ethan Bronner. Selections on Judge Robert Bork from *Battle for Justice: How the Bork nomination shook America* (New York: Anchor Book/Doubleday, 1989.) From the index: read all the references under Ronald Reagan: Bork supported by.

Timothy M. Phelps, Helen Winternitz. Selections on Judge Clarence Thomas from *Capitol Games: Clarence Thomas, Anita Hill, and the story of a Supreme Court Nomination* (New York: Hyperion, 1992.) From the index: read all the references under George Bush: Thomas supported by.

Week 8. Congressional investigations

Congresional investigations and American politics. The logic of investigations. Data: Phases of the process and their durations. Strategic calculations. An optimal stopping model of investigations. Durations and Questions (historical evidence). Consequences: the emergence of scandals. Testing the model. Conclusion.

General

David R. Mayhew. Chapter 2 from *Divided We Govern: party control, lawmaking, and investigations, 1946-1990* (Yale University Press, 1991.)

On SC Nominations

Charles M. Cameron and Jeffrey A. Segal. *The Politics of Scandals: The Case of Supreme Court Nominations, 1877-1994*.

Charles R. Shipan and Megan L. Shannon. 2003. Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations. *American Journal of Political Science*, 47(4): 654-668.

Other

Frank Guliuzza III, Daniel J. Reagan, and David M. Barrett. 1994. The Senate Judiciary Committee and Supreme Court Nominees: Measuring the Dynamics of Confirmation Criteria. *The Journal of Politics*, 56(3):773-787.

Ayo Ogundele and Linda Camp Keith. 1999. Reexamining the Impact of the Bork Nomination to the Supreme Court. *Political Research Quarterly* 52(2):403-420.

Case Study

Mark Gitenstein. *Matters of Principle: An insider's account of American's rejection of Robert Bork's nomination to the Supreme Court* (New York: Simon & Schuster, 1992.) Read as much of the book as possible.

Week 9. The Media and Political Bias.

The media in American politics. Media analysis. SC nominations and the contrast between liberal and conservative press. Statistical analysis. Conclusions.

General

Matthew Gentzkow and Jesse M. Shapiro. 2006. *What Drives Media Slant? Evidence from U.S. Daily Newspapers*. Working Paper, Department of Economics, University of Chicago.

Social Science on SC Nominations

Ross Williams, Presidents, Supreme Court Nominations, and the Bully Pulpit, Princeton Senior Thesis 2006.

Week 10. Citizens and the Dynamics of Opinion Holding

Citizens and political opinions. The role of the media (the minimal effects literature). The Micro-Model: How Citizens Evaluate Supreme Court Nominees. (What Citizens Want. A Bayesian Model of Evaluations). Testing the Micro-Model. (The Thomas Panel Data. The Bork nomination. The Roberts nomination.) Conclusions.

General

John R. Zaller. Chapter 7 and 9 from *The Nature and Origins of Mass Opinion* (Cambridge University Press, 1992.)

Christopher H. Achen, 1992. "Social Psychology, Demographic Variables, and Linear Regression: Breaking the Iron Triangle in Voting Research" *Political Behavior*, 14(3): 195-211.

Social Science on SC Nominations

AEI Public Opinion Study, "Public Opinion on the Supreme Court", 2006.

Gregory A. Caldeira and Charles E. Smith Jr., 1996. Campaigning for the Supreme Court: The Dynamics of Public Opinion on the Thomas Nomination. *The Journal of Politics*, 58(3): 655-681.

Charles Cameron and Jee-Kwang Park, 2006. "A Bayesian Framework for Studying Media Effects on Public Opinion". Working Paper.

Case Study

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Week 11. Voting in the Senate

Representation, ideology, strategy and voting. How strategic? Representation in high and low information environments. Aggregate models: perceived qualifications, scandals, and the information environment. A test of high information representation: synthetic estate estimates of public opinion. (Thomas, Bork, Thomas). Conclusion.

General

R. Douglas Arnold, 1990. Chapters 4 and 5 from *Logic of Congressional Action*. Yale University Press.

John W. Kingdon. Introduction and chapter 10 in *Congressmen's Voting Decisions*. (New York: Harper & Row, 1981.)

Social Science

Charles M. Cameron, Albert D. Cover, and Jeffrey A. Segal, 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model." *The American Political Science Review*, 84(2): 525-534.

Lee Epstein, René Lindstädt, Jeffrey A. Segal and Chad Westerland, 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees" in *The Journal of Politics*, 68(2): 233-487.

Charles M. Cameron and Jee-Kwang Park, 2006. Rejoinder to "The Changing Dynamics of Senate Voting on Supreme Court Nominees." Working paper.

L. Marvin Overby, Beth M. Henschen, Michael H. Walsh, and Julie Strauss, 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote on Justice Clarence Thomas" in *The American Political Science Review*, 86(4): 997-1003.

Some Notable Case Studies of Supreme Court Nominations

General

Henry Abraham. 1992. *Justices and Presidents: A Political History of Appointments to the Supreme Court*. A good compendium of anecdotes, a fine amateur history.

Bork

Norman Viera and Leonard Gross, *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations*. Material on Bork, focusing on the committee hearings. Some material on Souter, Ginsburg, and Breyer, some on Thomas, but rather superficial.

Michael Pertschuck and Wendy Schaetzel. 1989. *The People Rising: The Campaign Against the Bork Nomination*. Detailed insider account of interest group mobilization and strategy against Bork. The best interest group case study on SC nominations.

Mark Gitenstein. *Matters of Principle*. The best case study on SC nominations.

Patrick McGuigan and Dawn Weyrich. 1990. *Ninth Justice: The Fight for Bork*. Right-wing account.

Ethan Bronner, *The Battle for Justice*. OK journalistic account.

Haynsworth and Carswell

John Massaro. 1990. *Supremely Political*. Brief case studies of Haynsworth, Carswell, and Fortas.

John Paul Frank. 1991. *Clement Haynsworth, the Senate, and the Supreme Court*.

Ginsburg

See Viera and Gross.

Black

William Leuchtenberg. 1995. *The Supreme Court Reborn*, Chapter Seven "A Klansman Joins the Court," pp. 180-212.

Stanley Matthews

Scott Ainsworth and John Anthony Maltese, "National Grange Influence on the Supreme Court Confirmation of Stanley Matthews," *Social Science History* 20:45- (1996).

Rehnquist

John Dean. 2001. *The Rehnquist Choice*. Based on newly released Nixon tapes, maybe the best case study of presidential choice.

Fortas

Jones, Hugh Edward. 1976. *The Defeat of the Nomination of Abe Fortas as Chief Justice of the United States, A Case Study in Judicial Politics*.

Thomas

Timothy Phelps and Helen Winternitz. 1992. *Capitol Games: Clarence Thomas, Anita Hill, and the Story of a Supreme Court Nomination*.

Author/Artist: [Danforth, John C.](#)

Title: Resurrection : the confirmation of Clarence Thomas / John C. Danforth.

Edition: 1st trade ed.

Pierce Butler

David Danelski. 1964. A Supreme Court Justice Is Appointed.

William Brennan

Stephen Wermiel. 1994. "The Nomination of Justice Brennan: Eisenhower's Mistake? A Look at the Historical Record," *Constitutional Commentary* 11: 515-537