

**Princeton University
Department of Politics
Graduate Program
Fall 2004**

POL 589
Fri 1:00-4:00 Corwin 126

Judicial Politics
Charles Cameron

This course provides a graduate-level introduction to the study of law and courts as political institutions. The topics considered will vary depending on the interests of the seminar members, but may include: alternative ways to organize legal systems; the effect of law enforcement on crime; how and why plea-bargaining and pre-trial settlement operate; how trials and juries work; why the judicial hierarchy is organized the way it is and how effectively it works; how the 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 high courts and legislatures; how courts oversee the administrative state; how groups induce courts to create new rights, with what social consequences; the impact of courts on American political history; and the operation and creation of legal norms including the rule of law. Also considered are contemporary social scientific methods for researching law and politics. Reflecting the state of the discipline, the bulk of the material concerns US federal courts; however, outstanding comparative materials are used whenever possible. For the most part, we will not consider US state courts but an extensive literature exists and can be used by interested students.

Grading

Your grade will depend on your ability to contribute intelligently in seminar, and upon a research paper. Literature reviews are not acceptable papers. Instead, your paper should undertake an empirical analysis of some data (probably not original data), or the formalization of a logical argument, or both. Also acceptable are draft dissertation chapters, dissertation prospectuses, and grant proposals. You should identify a research topic early in the semester and begin working with alacrity. You will make periodic progress reports in class over the semester, and seminar members will offer suggestions in a collegial way. At the end of the semester, you will make a formal presentation of your research, in the style of an APSA presentation. Collaboration is the norm in this field, so I will be happy to receive collaborative papers. I will also be happy to suggest (probabilistically) feasible paper topics.

Blackboard

I will post slides and various manuscripts over the course of the semester. PLEASE NOTE: the syllabus is subject to change! You should check weekly to make sure you have the most updated list of readings.

Other

You should attend talks given at Princeton by judicial politics scholars (e.g., Jeff Segal) and attend relevant job talks, if any. This is part of your education and isn't really optional, absent compelling reasons. I will bring these talks to your attention, and I would appreciate it if you would reciprocate concerning any that have missed my attention.

Availability of Readings

If readings are available through JSTOR, I will not put them on Reserve. Otherwise, I will try to get them to the Firestone Library in a timely way. However, I am not very organized and any entrepreneurial assistance you might offer would be appreciated.

NOTE: At present, my books and papers are in transit so that it is doubtful that the readings for the first week will be on reserve. My apologies, but please do the best you can.

The following books have been ordered and will be available at the university store:

- Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*
- Lee Epstein and Jack Knight, *The Choices Justices Make*
- Kermit Hall (ed) *The Oxford Companion to the Supreme Court* [warning! Expensive. but fun browsing, keep beside bed for insomnia]
- Forest Maltzman et al *Crafting Law on the Supreme Court: The Collegial Game*
- Gerald Rosenberg, *The Hollow Hope*
- Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model Revisited*
- David Yalof, *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees*

The books listed above and the following books will be on reserve in the Firestone Library:

- William Forbath, *Law and the Shaping of the American Labor Movement*
- Murphy, Pritchett, and Epstein, *Courts, Judges, and Politics*, 5th Edition (for reference)
- Martin Shapiro, *Courts: A Comparative and Political Analysis*

Class Schedule (approximate)

In the first class session, we will discuss student interests and make adjustments to the syllabus to accommodate them. So the following is somewhat approximate.

Part I: The Basics

1. Why Study Courts? And How? 9/10
2. Judicial Institutions and Judicial Preferences 9/17

3. The Logic of the Law 9/24

Part II: The Judicial Process

4. Before the Trial/At the Trial: 10/1 [skip?]

5. On Appeal: The Judicial Hierarchy in Action 10/8

6. Before the High Tribunal I: Bargaining on the Supreme Court 10/15

7. Before the High Tribunal II: Opinion Assignment and Cert 10/22

Part III: Topics in Judicial Politics

8. The Politics of Supreme Court Nominations 11/5

9. Separation of Powers Games and Inter-branch Conflict 11/12

10. Courts and the Administrative State 12/3 [Skip? No class due to Polarization Conference?]

11. Creating Rights: Supply and Demand 11/19

12. Creating Rights: Consequences // OR Courts and APD // OR Social Norms 12/10

“APSA” presentations will be scheduled for some time after the break.

Readings

Oxford Companion = *Oxford Companion to the Supreme Court*

MPE5 = Murphy, Pritchett, and Epstein, *Courts, Judges, and Politics*, 5th Edition

1. Introduction: Why Study Courts? And How?

Paul Milgrom, Douglass North, and Barry Weingast, “The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs,” *Economics and Politics* 2(1):1-23 (1990) [if you haven’t taken POL 504 or POL 575 yet, just try to get the basic idea of the argument]

Robert Barro, “Democracy and the Rule of Law,” pp. 209-231 in Bruce Bueno de Mesquita and Hilton Root (eds) *Governing for Prosperity*, Yale UP (2000)

Danette Brickman, “Judicial Independence and the Protection of Civil Liberties: A Cross National Empirical Analysis,” paper prepared for the annual APSA meeting (2000)

Harold Spaeth, “The Attitudinal Model,” in Epstein (ed) *Contemplating Courts*.

Lee Epstein and Jack Knight, “Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead” (Field Essay) *Political Research Quarterly* 53: September 2000 [online at Lee Epstein’s web page <http://artsci.wustl.edu/~polisci/epstein>

Howard Gillman, “The Court as an Idea, Not a Building (or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision-making,” pp 65-87 in Cornell Clayton and Howard Gillman (eds) *Supreme Court Decision-Making: New Institutional Approaches* (1998)

Optional

Timothy Frye, “Rackets, Regulation, and the Rule of Law,” *Journal of Law, Economics and Organization* 16 (2):478-502 (2000).

Rogers Smith, “Political Jurisprudence, the ‘New Institutionalism,’ and the Future of Public Law,” 82 *APSR* 89-108 (1988).

Martin Shapiro, “Public Law and Judicial Politics,” in *Political Science: The State of the Discipline II*, ed Ada Finifter (1993)

2. Judicial Institutions and Judicial Preferences

- Martin Shapiro, *Courts: A Comparative and Political Analysis*, Chapters 1-3, 5
- William Wiecek, Michael Les Benedict, Melvin Urofsky, and Stephen Wasby, "History of the Court," pp. 373-404 in *Oxford Companion to the Supreme Court*
- "Instruments of Judicial Power," pp. 280-291 in MPE5
- Kenneth Karst, "Judicial Power and Jurisdiction," pp. 456-464 in *Oxford Companion to the Supreme Court*
- Richard Posner, "What Do Judges Maximize," pp. 109-144 in Posner *Overcoming Law* (1995)
- Daniel Pinello, "Linking Party to Judicial Ideology in American Courts: A Meta-Analysis," *Justice System Journal* 20(3), 1999.
- Larry Baum, *The Puzzle of Judicial Behavior*, U Michigan Press (1997) esp pp. 1-22 [a terrific literature review on judicial preferences]

Optional: Institutions

- Herbert Jacob et al *Courts, Law, and Politics in Comparative Perspective* Yale UP (1996)
- H. Patrick Glenn, *Legal Traditions of the World* (2000)
- Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (2001)
- John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (second edition) (1985)
- Jodi Finkel, "Judicial Reform in Latin America: Market Economies, Self-Interested Politicians and Judicial Independence," manuscript [on line at the working paper archive www.artsci.wustl.edu/~polisci/lawcourt/archive/]
- Some recent papers on comparative constitutional courts:
<http://law.wustl.edu/igls/Conconfpapers/confpapers.html>
- "History of American Law," pp. 364-396 in *Oxford Companion to American Law*
- James Stoneking, "Injunctions and Equitable Remedies," pp. 430-432 in *Oxford Companion to the Supreme Court*

Optional: Preferences

- Robert Higgins and Paul Rubin, "Judicial Discretion," *Journal of Legal Studies* 9:129-38 (1980) (promotion prospects do not affect judicial rulings)
- G.M. Anerson, William Shughart, and Robert Tollison, "On the Incentives of Judges to Enforce Legislative Wealth Transfers," *Journal of Law and Economics* 32:215-28 (1989) (promotion prospects do affect judicial rulings)
- James Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," *APSR* 72:911-924 (1978)
- Orley Ashenfelter, Theodore Eisenberg and Stewart Schwab, "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes," *Journal of Legal Studies* 24:257-81 (1995)

3. The Logical Structure of Law

Part of this class will be devoted to practical issues in judicial research, such as finding court opinions, statutes, and so on. For this, please skim:

Morris Cohen, *How to Find the Law*, pp. 21-46, 54-66, 70-75, 81-92, 99-112, 115-122, 15-142, 144-176, 197-216, 217-257, 261-300, 376-378, 404-409, 412-418, 427-429, 457-472, 560-589. Obviously, most of this is mind-bogglingly dull; the point is to familiarize yourself so that you have some glimmer of what is out there, for the future. The conscientious will drop by the Princeton Law Library and look at some of the things Cohen talks about, e.g, the US Code, reporters, Shepard's etc.

Sara Benesh, "Becoming An Intelligent User of the Spaeth Supreme Court Data Bases."

Harold Spaeth, *Codebook for the US Supreme Court Judicial Database* (skim) [You can get this online]

Lee Epstein, et al., *Supreme Court Compendium* – in the Reference section of Stokes, flip through it.

Edward Levi, *Introduction to Legal Reasoning* (entire) (1962)

William Twining and David Miers, *How to Do Things With Rules*, Sections 3.3, 4.1.1, Chapter 6, pp. 416-417, and Appendix II. Feel free to browse more widely in this interesting but very quirky book. (1999)

Lewis Kornhauser, "Modeling Collegial Courts II. Legal Doctrine," *JLEO* 8:441-470 (1992). (Tough going but a fundamental paper.)

Jeffrey Segal, "Predicting Supreme Court Decisions Probabilistically: The Search and Seizure Cases," *APSR* 78: 891-900 (1984) (What works in theory works in practice!)

Optional

Pablo Spiller and Matthew Spitzer, "Judicial Choice of Legal Doctrines," *JLEO* 8:8-46 (1992)

Fred Kort, "Content Analysis of Judicial Opinions and Rules of Law," in Glendon Shubert (ed) *Judicial Decision-making*.

----. "Predicting Supreme Court Decisions Mathematically: A Quantitative Analysis of the 'Right to Counsel' Cases," *APSR* 51:1-12 (1957)

Stephen Elias et al *How to Find and Understand the Law* (2001)