

Princeton University
Department of Politics

POL 590 – Current Research in Law and Politics
Spring 2013

Keith E. Whittington
240 Corwin Hall, 258-3453
kewhitt@princeton.edu

TH 1:30-4:20, 4:30-6:00
127 Corwin Hall

This seminar has a somewhat unique structure and purpose. The seminar examines current research in law and politics across a range of specific research questions, methods, and research traditions. The seminar combines background reading on selected topics with presentation of current research by scholars in the field of law and politics. Participants are expected to participate in both the regular seminar sessions and the public law colloquium, complete assigned readings, and complete assigned written work. The readings for the seminar will include both classics in the field and cutting-edge working papers. Because of its eclectic content, the seminar will provide an overview of the field, but through the lens of current research projects. The seminar will provide an opportunity both to meet outside scholars in the field and see the development of new lines of research in law and politics.

Schedule:

1. February 7: background for Anna Harvey
Note: Lee Epstein will also be presenting at noon at CSDP on 2/7/2013 (attendance not required for the seminar)
2. February 14: Anna Harvey in public law colloquium
3. February 16: background for Kevin McMahon
4. February 23: Kevin McMahon in public law colloquium
5. March 2: background for Corey Yung
6. March 9: Corey Yung in public law colloquium
7. March 28: background for Ryan Black
8. April 4: Ryan Black in public law colloquium
9. April 11: background for George Lovell
10. April 18: George Lovell in public law colloquium
11. April 25: background for Quinn Mulroy
12. May 2: Quinn Mulroy in public law colloquium

Materials:

The readings will generally be made available on the Blackboard course website. The paper of the speaker for the public law colloquium will be posted on the public law colloquium website at <http://www.princeton.edu/politics/graduate/departmental-colloquia/public-law/>

Requirements:

Each participant in the seminar is required to attend both the seminar and the public presentation of the public law colloquium. The public law colloquium will meet every other week in the spring from 4:30-6:00 pm in 127 Corwin Hall. The seminar will have an abbreviated session during the weeks of the public law colloquium. Students will be expected to participate actively in both the seminar and the public law colloquium sessions.

Students in the seminar may choose either a long paper or a short paper option. The long-paper option allows you to complete a seminar paper in the course. The seminar paper should be a research paper on a topic of your choice relating to law and politics of no more than 40 pages. The paper will be due on May 14. The short-paper option allows you to complete a series of short papers relating to the readings. You will complete six short papers, one for each speaker who will visit the public law colloquium. The paper for that speaker will be due by midnight on the Wednesday before the public law colloquium. Each short paper should be constructed as a “peer review” evaluation of the speaker’s paper for a scholarly journal. Each short paper should be between 1000 and 2500 words, and the paper should include a brief summary of the important content of the working paper (no more than 200 words), a detailed analysis of the virtues and problems of the paper, and specific suggestions for improving the paper. (Unlike the real world, this peer review should not include a judgment on whether the paper should be accepted for publication.) The review should be suitable for sharing with the author (you can include an anonymous copy of the review, if you prefer).

The “required” readings are absolutely required. You are expected to have read thoroughly and thought about each of these readings before every class. The speaker’s own paper will be the focus of the session on the week of the public law colloquium, with the background readings before the focus of the “off weeks.” The suggested readings are for your further consideration and reference. You are welcome to make use of the suggested readings in preparing your papers, and to incorporate them as appropriate for the benefit of the other participants.

Participation will form 10 percent of your final grade, with the rest determined by the written work.

Readings:

First Speaker: Anna Harvey, NYU – “Slavery, Inequality, and the Origins and Consequences of Judicial Review”

- Rafael La Porta, et al., “Judicial Checks and Balances,” *Journal of Political Economy* 112 (2004): 445
Daron Acemoglu and Simon Johnson, “Unbundling Institutions,” *Journal of Political Economy* 113 (2005): 949
Lars P. Feld and Stefan Voigt, “Economic Growth and Judicial Independence: Cross-Country Evidence Using a New Set of Indicators,” *European Journal of Political Economy* 19 (2003): 497
Robin L. Einhorn, “Institutional Reality in the Age of Slavery: Taxation and Democracy in the States,” *Journal of Policy History* 18 (2006): 21
Douglass North and Barry Weingast, “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England,” *Journal of Economic History* 49 (1989): 803
Anna Harvey, “Slavery, Inequality, and the Origins and Consequences of Judicial Review”

Suggested reading: Daron Acemoglu and James Robinson, *Why Nations Fail*
Guangdong Xu, “The Role of Law in Economic Growth: A Literature Review,” *Journal of Economic Surveys* 25 (2011): 833
Kenneth Dam, *The Law-Growth Nexus*

Second Speaker: Kevin McMahon, Trinity College – “Fighting Busing, Crime, Smut, and Social Disorder in Nixon’s America”

- Keith E. Whittington, *Political Foundations of Judicial Supremacy*, pp. 218-26
Thomas M. Keck, *The Most Activist Supreme Court in History*, ch. 4
Ken I. Kersch, “Ecumenicalism Through Constitutionalism: The Discursive Development of Constitutional Conservatism in National Review, 1955-1980,” *SAPD* 25 (2011): 86
Richard L. Pacelle, Jr., *Between Law and Politics*, ch. 4
Cornell W. Clayton and J. Mitchell Pickerill, “The Politics of Criminal Justice: How the New Right Regime Shaped the Rehnquist Court’s Criminal Justice Jurisprudence,” *Georgetown Law Journal* 94 (2005): 1385
Kevin J. McMahon, *Nixon’s Court*, ch. 8

Suggested reading: Keith E. Whittington, "The Burger Court: Once More in Transition," in *The Supreme Court of the United States*, ed. Christopher Tomlins
Bernard Schwartz, ed., *The Burger Court: Counter-Revolution or Confirmation?*

Third Speaker: Corey Yung, University of Kansas Law School – "How Judges Judge"

Frank Cross, "Decisionmaking in the U.S. Circuit Court of Appeals," *California L. Rev.* 91 (2003): 1457
Tracey E. George, "Developing a Positive Theory of Decisionmaking on the U.S. Courts of Appeals," *Ohio St. L. Rev.* 58 (1998): 1635
Richard A. Posner, "What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)," *Supreme Court Economic Review* 3 (1993): 1
Jonathan P. Kastellec, "Hierarchical and Collegial Politics on the U.S. Courts of Appeals," *JOP* 73 (2011): 345
Virginia A. Hettinger, Stefanie A. Lindquist, and Wendy L. Martinek, "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals," *AJPS* 48 (2004): 123
Corey Yung, "How Judges Judge"

Suggested reading: David E. Klein, *Making Law in the United States Courts of Appeals*
Virginia A. Hettinger, et al., *Judging on a Collegial Court*

Fourth Speaker: Ryan Black, Michigan State – "Supreme Court Agenda Setting and the Influence of Amicus Curiae"

Gregory A. Caldeira and John R. Wright, "Organized Interests and Agenda Setting in the U.S. Supreme Court," *APSR* 82 (1988): 1109
H.W. Perry, Jr., *Deciding to Decide*, ch. 3, 8
Jeff L. Yates, Andrew B. Whitford, and William Gillespie, "Agenda Setting, Issue Priorities, and Organizational Maintenance: The U.S. Supreme Court, 1955-1994," *BJPS* 35 (2005): 357
Ryan C. Black and Ryan J. Owens, "Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence," *JOP* 71 (2009): 1062
Thomas G. Hansford, "Information Provision, Organizational Constraints, and the Decision to Submit an Amicus Curiae Brief in a U.S. Supreme Court Case," *PRQ* 57 (2004): 219
Paul M. Collins, "Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation," *LSR* 38 (2004): 807
Ryan C. Black, "Supreme Court Agenda Setting and the Influence of Amicus Curiae"

Suggested reading: Paul M. Collins, Jr., *Friends of the Supreme Court*
Richard L. Pacelle, *The Transformation of the Supreme Court's Agenda*

Fifth Speaker: George Lovell, University of Washington – "This is Not Civil Rights"

Mark Tushnet, "An Essay on Rights," *Texas Law Review* 62 (1983): 1363
Stuart A. Scheingold, *The Politics of Rights*, ch. 1-2, 9
Patricia Ewick and Susan Silbey, *The Common Place of Law*
George Lovell, *This is Not Civil Rights*, ch. 4-5

Suggested reading: Mary Ann Glendon, *Rights Talk*
Sally E. Merry, *Getting Justice and Getting Even*

Sixth Speaker: Quinn Mulroy, Syracuse University – "Enforcing Rights Protections: The Regulatory Power of Private Litigation and the Equal Opportunity Commission"

Robert Kagan, "Adversarial Legalism and American Government," *Journal of Policy Analysis and Management* 10 (1991): 369

Sean Farhang, "Public Regulation and Private Lawsuits in the American Separation of Powers System," *AJPS* 52 (2008): 821

Desmond King and Robert C. Lieberman, "Ironies of State Building: A Comparative Perspective on the American State," *World Politics* 61 (2009): 547

Paul Frymer, "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935-1985," *American Political Science Review* 97 (2003): 483

William J. Novak, "The Myth of the 'Weak' American State," *American Historical Review* 113 (2008): 752

Quinn Mulroy, "Enforcing Rights Protections: The Regulatory Power of Private Litigation and the Equal Opportunity Commission"

Suggested reading: Sean Farhang, *The Litigation State*
Frank Dobbin, *Inventing Equal Opportunity*