Introduction

This seminar is designed to provide overview of the major debates in Judicial Politics. The primary goals of the course are to familiarize students with the principal questions being asked by scholars in this subfield, the methodological approaches employed, and the avenues available for future research. This is not a course in constitutional law. Rather, the focus is on studying law and courts as political institutions and judges as political actors. We will examine decision making and power relations within courts, within the judicial hierarchy, and within the constitutional system. While we will concentrate on U.S. courts, we will also cover some material on other courts.

Topics include:

- **Law** What is Law? How do legal systems operate? How do we study law?


- **The Judicial Hierarchy** How is the judiciary organized? How does its structure affect decision making? What are the power relations within it? Lower court compliance. Auditing by the higher courts. The role of *stare decisis*. Agency and team approaches to hierarchy.

Course Requirements

- **Readings** The readings, though extensive and representative, are not comprehensive (even including all the recommended readings). Students are expected to have completed the assigned weekly reading before each class and to arrive prepared to contribute actively to all discussions. A warning—the reading load for this course is heavy and some of the readings are quite difficult, particularly for those without previous exposure to statistical methods or formal theory. This does not mean such exposure is a pre-requisite for the course. Rather, it means that you need to set aside sufficient time to work through these papers, to understand the substantive assumptions, intuitions, and results (even if you cannot work through the formal results or the statistical analyses themselves). If you get stuck, you should arrange to discuss such readings with me—which means you should start the readings early enough before the relevant class so that there is time for us to meet. We also will spend time in class working through some of the theoretical and empirical models from the readings.

- **Participation** In each class we will aim to clarify and probe the puzzles, theories, methods, and evidence presented in the readings and to assess the contributions they make to an understanding of judicial politics. The issues of research design we will explore, however, will be relevant throughout political science. This course will have a seminar format, though I will occasionally lecture on material as is necessary. Preparation for and active participation in our weekly discussions is of the utmost importance. You should expect to be called on at any time, to discuss any reading in any session. Preparation involves more than just doing the readings, but coming to class having thought about the material and having organized your thoughts. Each week, you should bring questions and points to discuss.

Also, I would strongly encourage you to attend the meetings of the Public Law Colloquium on Feb. 16th and March 29th. The colloquium meets right after our class in 127 Corwin.

- **Written assignments**
  - Students may choose either option A or B

- **Option A** requires students to complete a combination of six short papers (about 4 to 6 pages). Short papers will take two forms: 1) papers reacting to the week's readings over the course of the semester; these can be written any week 2) data analyses of a question related to an issue raised in the week's reading; see below for which weeks this will be an option.

You will have discretion over which weeks you can write papers, subject to the constraint that two papers must be completed in the first six weeks of the semester (i.e. before Spring Break). These papers must be submitted (either via e-mail or to my office) no later than 9 a.m. the day of class (early papers are always welcome; late papers will not be accepted). I recommend this option for Masters students and Ph.D.
students who do not believe they will go on to do research in judicial politics.

High quality reaction papers will avoid summarization and instead present critical analysis of most or all of that week’s readings (you should not just pick at smaller points within one article). In your analysis, you might focus on:

a. Questions addressed by the readings
b. Contributions of the readings (i.e., what have we learned?)
c. The place of the readings in the broader literature
d. Critiques of the authors theoretical arguments, research design, evidence, and conclusions
e. Avenues for future research

The pedagogical purposes of data analyses include: practice in implementing replications of existing analyses, including obtaining existing data; practice in performing your own statistical analyses; and experience in writing empirical sections in papers. This means: clearly describing the question and the data, and clearly presenting the results (graphs are ideal; if you use tables, they should be neat and concise—e.g. no copy-and-pasting of Stata output). You must submit annotated statistical code with your assignment. The list of potential data analyses can be found below.

2) **Option B** requires students to write three short review papers along with an original research paper. The paper should be the length and style of a journal article, complete with a review of the relevant literature, an appropriate research design, and execution of that design. In most instances this will mean an empirical analysis or a formalization of a logical argument. Literature reviews are not acceptable. A draft proposal is due by April 1st. Feel free to speak to me early in and throughout the semester about possible paper topics. Students who write research papers will present their results the last day of class. The research paper is due by the last day of the semester. I strongly recommend this option for Ph.D. students with research interests in judicial politics.

Please note that you are not limited to a topic covered on the syllabus. As noted below, there are several topics in judicial politics we won’t be able to cover. If you’re interested in exploring a paper in one of these areas, please talk to me.

**Readings**

I have a posted a pdf version of all the required readings in a zip file on Blackboard (under “Course Materials”); these are organized by week. I have also posted copies of recommended readings that are not easily available on the Internet. You will be responsible for tracking down other recommended readings. Finally, some readings (mainly book chapters) will be made available through Electronic Reserve. These are indicated with [ER].

I have ordered the following books for purchase at Labyrinth. We will read most of each
throughout the semester.


I have also put these books on reserve at Firestone. It is up to you whether you would like to purchase them. If you plan on pursuing judicial politics beyond the class, it is probably worth doing so (especially Segal and Spaeth). You can also find many used copies of each on websites such as www.abebooks.com or www.fetchbook.info.

Here are some recommended books. Parts of them appear in the required readings (but you will not need to purchase them).


• Baum, Lawrence. 1998. *The Puzzle of Judicial Behavior*. University of Michigan Press. *(This is an excellent literature review of all things judicial politics.)*

• Farnsworth, Ward. 2007. *The Legal Analyst: A Toolkit for Thinking about the Law*. University of Chicago Press. *(An excellent introduction to how the law and legal rules deal with such things as coordination problems, prisoners dilemmas, etc.)*


• Epstein et al. 2006. *Supreme Court Compendium, 4th ed*. CQ Press *(A good source for data – earlier editions will be cheaper online).*


Schedule of Topics

- Week 1 (2/9) Why study courts? And how?
- Week 2 (2/16) The "Legal Model" and the Attitudinal Model
- Week 3 (2/23) Measuring Judicial Ideology
- Week 4 (3/1) Modeling Collegial Courts and Modeling Law I—Legal Rules
- Week 7 (3/29) Decision-making on Collegial Courts — The “Strategic Model”
- Week 8 (4/5) Bargaining and Power on Collegial Courts
- Week 9 (4/12) Agenda Setting and Case Selection
- Week 10 (4/19) The Judicial Hierarchy—Team and Agency Models
- Week 11 (4/26) External Politics I—Separation of Powers Games
- Week 12 (5/3) External Politics II—Court Curbing and Judicial Intimidation
- *If we had a week 13, it would be:* Week 13: External Politics III—Courts, Public Opinion and Elections

Note that the many of the subjects we will discuss will overlap across multiple weeks. For instance, it doesn't make sense to think about hierarchy without thinking about legal rules. You should try to draw connections to earlier readings and classes as we move through the semester.

Also note that this list of topics is far from exhaustive. The most notable omission is that we will cover little from the American Political Development [APD] approach to judicial politics, such as the judiciary’s role in the creation of right or the development of judicial review. If you’re interested in such lines of inquiry, Professors Whittington and Frymer cover much of this ground in their graduate seminars.

Other topics not covered include the politics of judicial expansion and appointments; the politics of settlements, trial and juries; and most of the literatures in state and comparative judicial politics. If you’re interested in exploring topics outside those we cover, either through independent study or for your research paper, please let me know.
List of Data Analyses

Note: I have noted when a dataset is available on Blackboard; it can be found in the zip file “Data Replication Materials” under “Course Materials”.

- **Week 3**: Obtain the Spaeth database and the Martin-Quinn scores. For each justice in each term, calculate the percent of liberal votes across all cases. Then calculate the correlation of this measure with each justice’s dynamic MQ score—that is, with the justice’s MQ score in each term. Make a graph showing the correlation. What does this correlation say, if anything, about the MQ scores and how we should interpret them? Finally, calculate the ranks of the justices in each term by MQ and % liberal — how often do they differ?

- **Week 4**: There are two options this week. Do not do both this week, but you can do option this week and the other option during a later week.
  
  - **a)** I have posted the search-and-seizure data analyzed in Segal (1984) on Blackboard. The data has been updated through 1999. First, replicate the probit estimates in Table 1. Second, conduct a “rolling analysis” of the following manner, over the time period 1962-1999. Take the first 15 years of the data (1962-1976). Run Segal’s model and save the coefficients. Then add 1 year to each end of the window i.e. 1963-1977. Again, save the coefficients. Keep adding one year to each end of the window, until you reach 1984-1998. Analyze the change in both model performance over time, and the change in the individual case fact coefficients over time. What do these changes tell you both about the evolution of the Supreme Court’s search-and-seizure doctrine in this period and about the usefulness of fact-pattern analysis?
  
  - **b)** Obtain the replication data and code for Kastellec (2010). Choose one of the six trees. Perform a bootstrap analysis in which you take 10 samples, each randomly selecting 85% of the relevant observations. For each sample, estimate and present a classification tree. What does this procedure tell you about the stability of the trees and how well they can be used to summarize doctrine?

- **Week 6**: I have posted the freedom-of-expression data from Richards and Kritzer (2002) on Blackboard, along with a codebook. Replicate Table 1, Column 1 from Richards and Kritzer, and then replicate Table 1, Variable Set A from Lax and Rader (2010).

- **Week 8**: Replicate Figure 1 from Clark and Lauderdale (2010). *You should create your own code from scratch.*

- **Week 9**: I have posted a version of the dataset used in Cameron, Segal and Songer (2000) on Blackboard. Attempt to replicate Table 1 and Figure 4.

- **Week 10**: I have posted a version of the dataset used in Songer, Segal and Cameron (1994) on Blackboard. Attempt to replicate Tables 1 and 2. Based on your replication, do the conclusions the authors make hold up?
Weekly Readings

Week 1: Why study courts? And how?

- 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

Recommended

- Martin Shapiro, *Courts: A Comparative and Political Analysis*, all, but especially Ch. 1
**Week 2: The "Legal Model" and the Attitudinal Model**

- Symposium on *The Supreme Court and the Attitudinal Model Revisited.* 2003.

**Recommended**

- Cross, Frank B. “Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance.” *NWLR* 92-1.
- Barry Friedman and Andrew D. Martin. "Looking for Law in All the Wrong Places: Some Suggestions for Modeling Legal Decisionmaking." Presented at the What's Law Got To Do With It? Conference, Indiana University Maurer School of Law, March 2009. more l

**The next series of papers examines the debate over Segal and Spaeth’s test as to whether Supreme Court justices are constrained by precedent:**

**Week 3: Measuring Judicial Ideology**


**Recommended**

Week 4: Modeling Collegial Courts and Modeling Law I: Legal Rules


**Recommended**

- Edward Levi. 1949. *An Introduction to Legal Reasoning.* (A classic for understanding how to “think like a lawyer.”)
Week 5: Modeling Collegial Courts and Modeling Law II: Learning in the Judicial Hierarchy

**Guest Lecturer: Deborah Beim**

- Scott Baker and Claudio Mezzetti. 2010. “A Theory of Rational Jurisprudence.” Washington University working paper. *(If you have not taken game theory, do the best you can to follow the model.)*
- Tom Clark and Jonathan Kastellec, “An Optimal Stopping Model of Supreme Court Review of Inter-Circuit Conflicts” Princeton University working paper.

**Recommended**

Week 6: Modeling Collegial Courts and Modeling Law III: Precedent


**Recommended**

Week 7: Decision-making on Collegial Courts I—The “Strategic Model”


**Recommended**

• **Week 8: Bargaining and Power on Collegial Courts**

  - Cliff Carrubba, Barry Friedman, Andrew D. Martin, and Georg Vanberg. Forthcoming Who Controls the Content of Supreme Court Opinions." *AJPS*.

**Recommended**


**The following are papers that focus on collegiality on the Courts of Appeals**

Week 9: Agenda Setting and Case Selection

- Cameron, Charles M., 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*

*Recommended*

- Charles Epp, *The Rights Revolution*
• **Week 10: The Judicial Hierarchy—Team and Agency Models**

  - **Note:** we will also discuss the Cameron, Segal, and Songer paper from last week.

**Recommended**

- Chad Westerland, Jeffrey Segal, Lee Epstein, Scott Comparato and Charles Cameron. “Strategic Defiance and Compliance in the U.S. Courts of Appeals.” University of Arizona working paper.
**Week 11: External Politics I—Separation of Powers Games**

- Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge UP (2002) chs. 3 and 8 (material on the Separation of Powers that we skipped in week 2.)

**Recommended**

Week 12: External Politics II—Court Curbing and Judicial Intimidation


**Recommended**

If we had a week 13, it would be ...

Week 13: External Politics III—Courts, Public Opinion and Elections


Recommended