

**Judicial Politics and Conflict Resolution**

***Spring 2016***

Class meets Mondays 2:45-4:15 in Naftali 104

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One definition of politics contends that it is the authoritative allocation of values for a society. As such, contentiousness and conflict over values (and resources) is key to the political process. Different government institutions solve conflicts in different ways. In the legislature, for instance, negotiation, compromise and collaboration serve to resolve conflicts between factions, parties and individuals. The judiciary also offers a set of institutions where conflicts are solved. Courts, however, approach the task of resolving conflicts in a way that is distinctly different from legislatures. In this class, we will delve into the intricacies of judicial decision making and examine several historical cases where courts resolved conflicts. We will examine the motivations of justices, their constraints, the influences that constitutional principles have on their rulings and the power of the public and politics writ large on judicial decisions.

Course assignments

- Class participation and in-class simulation.
- A midterm exam.
- A final paper – a personal perspective – by the end of the semester, each student will submit a paper (5 pages, double spaced, 12 font) which will include her/his thoughts about judicial politics and conflict resolution in light of the theories and readings discussed in class. The style for this paper and its contents are largely to the students' discretion. Some of you may be interested in analyzing a Supreme Court case from your home country using some of the analytic tools discussed in class. Others may want to consider alternative ways in which judicial institutions may be used in the process of conflict resolution. And yet others may be interested in questions of international institutions and international law.

Breakdown of final grade

Class Participation	35%
Midterm Exam	30%
Final paper	35%

Useful websites

Jstor - <http://www.jstor.org/>

Findlaw - <http://findlaw.com/>

SCOTUS blog - <http://www.scotusblog.com/movabletype/>

<http://jurist.law.pitt.edu/currentawareness/ussupremes.php>

The Oyez Project - <http://www.oyez.org/>

Legal Information Institute, Cornell Law School - <http://www.law.cornell.edu/supct/index.html>

On the Docket, Northwestern University - <http://docket.medill.northwestern.edu/>

## Course Outline and Readings

February 29 - *Introduction, Syllabus and Course Overview*

March 7 – *Why should courts have the power to resolve conflicts?*

**Readings:** Marbury v. Madison; Federalist Paper #78; The US Constitution (Articles I & III)

Recommended:

Lee Epstein and Jack Knight. 2000. Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead. *Political Research Quarterly*, 52: 625  
Jeffrey Segal. 1984. Predicting Supreme Court Decisions Probabilistically: The Search and Seizure Cases. *American Political Science Review* 78: 891-900  
Robert G. McCloskey. The American Supreme Court. Chapters 1-4

March 14 – *How should justices make decisions? How do they make decisions?*

*Use of Game Theoretic Models in the Analysis of Conflicts*

**Readings:** judicial decision making models - SCAMR Chapters 2, 3, 7, 8, 9 & pp. 97-110

Recommended:

Segal and Spaeth, Introduction, Ch. 3, 8  
Segal and Spaeth, The Influence of Stare Decisis on the Votes of US Supreme Court Justices, 40 *AJPS* 971 (1996)  
Brisbin 40 *AJPS* 1004 (1996)  
Knight and Epstein 40 *AJPS* 1018 (1996)  
Brenner and Stier 40 *AJPS* 1036 (1996)  
Songer and Lindquist 40 *AJPS* 1049 (1996)  
Segal and Spaeth 40 *AJPS* 1064 (1996)  
Richards and Kritzer (2002). "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96(2)

March 15 – class trip to Supreme Court

March 21 – Double Class (14:30-17:00) - *Individual Meetings about final paper*

March 28 – *Conflicts about judging – the judicial appointment process*

**Readings:** Shipan and Moraski. "The Politics of Supreme Court Nominations: ..." 4 *AJPS* 1069 (1999)

Recommended:

Caldeira and Wright. "Lobbying for Justice: ..." 42 *AJPS* 499 (1998)  
Hall. "Voluntary Retirement from State Supreme Courts." 63 *JoP* 1112 (2001)  
Martinek et al. "To Advise and Consent." 64 *JoP* 337 (2002)  
Hall. "State Supreme Courts in American Democracy." 95 *APSR* 315 (2001)  
Segal, Epstein, Lindstaedt and Westerland. "The Changing Dynamics of Senate Voting on Supreme Court Nominees," 68 *JoP* (2006)

April 4 – Double Class (14:30-17:00) - *Conflicts in a Federal System: Incorporating the Bill of Rights*

**Readings:** Barron v. Baltimore; Hurtado v. CA; Palko v. Connecticut; Duncan v. LA  
*Conflicts around National Security: Freedom of the Press – Mock Trial*

**Readings:** NY Times v. U.S.; Near v. Minnesota

April 11 – *Midterm Exam*

April 20 – Courts in Conflict: The Israeli Case

Watching *The Law in These Parts* by Raannan Alexandrovich

May 2 – *TBL Assignment: Integrating Theories of Conflict Resolution and Judicial Decision Making*

Conflicts in National and International Courts: The International Court of Justice, the Israeli Supreme Court and the Fence

**Readings:** *Bethlehem Municipality v. The State of Israel*, HCJ 1890/03 (2005); *Beit Sourik Village Council v. The Government of Israel*, HCJ 2046/04 (2004); *Zaharan Yunis Muhammad Mara'abe v. The Prime Minister of Israel*, HCJ 7957/04 (2005)

May 9 – *Conflicts and the public: the effects on public opinion and on the public writ large Institutional and Environmental Constraints: Hierarchies, Public Opinion, Lawyers, Guns and Money*

**Readings:** McGuire. “Repeat Players in the Supreme Court...” JoP (1995)  
Songer, Cameron, Segal. “The Hierarchy of Justice ...” 38 AJPS 673 (1994)  
Hoekstra and Segal. “The Shepherding of Local Public Opinion.” 58 JoP 1079  
Donohue and Levitt. “The Impact of Legalized Abortion on Crime.” 116 Quarterly Journal of Economics 379 (2001)  
{Possibly: Mediation and Negotiation Session}

Recommended:

Cameron, Segal and Songer: “Strategic Auditing in the Judicial Hierarchy” 94 *APSR* 101 (2000)  
Giles and Walker. “Judicial Policymaking and Southern School Segregation.” 37 JoP 917 (1975)  
Mishler and Sheehan. “The Supreme Court as a Counter-Majoritarian Institution.” 87 *APSR* 87 (1993).  
Norpoth and Segal. “Popular Influence on Supreme Court Decisions.” 88 *APSR* 711 (1994)  
Mishler and Sheehan, Response, 88 *APSR* 716 (1994)  
Mishler and Sheehan. “Public Opinion, the Attitudinal Model ...” 58 JoP 169 (1996)  
Espstein and Rowland. “Debunking the Myth of Interest Group Invincibility ...” 85 *APSR* 205 (1991)

May 16 – *Conflicts and Social Change: Can Courts bring about Change and When?*

**Readings:** Sommer et al. 2013. “Institutional Paths to Policy Change” *The Law and Society Review*

Asal, Sommer and Harwood. 2013. “Original Sin” *Comparative Political Studies*

Recommended reading:

Rosenberg, *The Hollow Hope*

\* ***individual meetings about final paper***

May 23 – Courts as Initiators of Conflict Resolution; Courts as Complimentary Institutions in the Process of Conflict Resolution

**TBL Assignment**

May 30 - *Conclusions; Final papers due*