

POS729 – Seminar in Judicial Politics

Syllabus - Fall 2008

Class meets W 5:45-8:35, Draper Hall 21B

Instructor: Prof. Udi Sommer

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Office Hours: W 11-12:30 (Humanities B16) and by appointment

Introduction

The aim of this course is to provide a comprehensive introduction to judicial decision-making in the United States, with a heavy emphasis on the US Supreme Court. The main objective of the course is to get students to understand how judges make decisions.

Texts

Forrest Maltzman, James F. Spriggs II, Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press. ISBN: 0-521-78394-1

H. W. Perry. 1991. *Deciding to Decide*. Cambridge: Harvard University Press. ISBN: 0-674-19443-8

Jeffrey Segal and Harold Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. ISBN: 0-521-78971-0

Epstein and Knight. 1998. *The Choices Justices Make*.

Rosenberg. *The Hollow Hope*

Grading

Grading will be based on two presentations of research (of a research proposal (in poster format) on 10.22 and of the final research project (in panel format) on 12.5), class leadership and the final paper.

Presentations	15% (each)
Leadership	25%
Final Paper	45%

I reserve the right to add or subtract up to 10 points from your average based on class participation.

Student leadership

Each week, one student will be responsible for leading discussion on the required readings. In class, discussion leader will present the readings briefly, as well as his/her comments and questions for class discussion. Each student can expect to have this duty several times during the semester, and will be graded on his/her mastery of the assigned readings, the quality of his/her presentation and leading the class discussion.

In class, active, informed and regular participation (on the basis of readings listed in the schedule below) is expected not only from the discussion leader but from all students.

Class Schedule and Assignments

The course plan, below, is divided up by topics. Within each topic, I list readings that I plan to cover in class. This list is somewhat provisional, and we could have some additions and certainly some deletions along the way. Most of the readings are journal articles. I have not ordered books through the bookstore. The books that you will need may be purchased independently, or shared, or borrowed from the library. Should you have any problems obtaining any of the reading materials listed in the schedule below, please let me know.

Week 1 (August 27):

No Class – American Political Science Association Annual Meeting

Week 2 (September 3):

Syllabus distribution, introduction, and assignments

Week 3 (September 10):

Introduction to the study of Judicial Politics

Smith Rogers. 1988. Political Jurisprudence, the ‘New Institutionalism’, and the Future of Public Law. *American Political Science Review* 82: 89-108

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

Recommended

Robert G. McCloskey. The American Supreme Court. Chapters 1-4

Segal and Spaeth (2002) Ch. 4

Week 4 (September 17):

Judicial Appointments

Overby et al. “Courting Constituents ...” 86 APSR (1992)

Caldeira and Wright. “Lobbying for Justice: ...” 42 AJPS 499 (1998)

Shipan and Moraski. “The Politics of Supreme Court Nominations: ...” 43 AJPS 1069 (1999)

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)

Recommended

Segal and Epstein. (2005). “Advice and Consent: The Politics of Judicial Appointments.” Oxford University Press

Week 5 (September 24) **3-5:30pm:**

Agenda Setting in the Supreme Court

Perry, Deciding to Decide

Brenner, Saul: “The New Certiorari Game” 41 *JoP* 649 (1979)

Boucher and Segal: “Supreme Court Justices as Strategic Decision Makers” 57 *JoP* 824 (1995)

Caldeira, Wright and Zorn. Strategic Voting and Gatekeeping in the Supreme Court. 15 *JLEO* 549 (1999)
Caldeira and Wright: "Organized Interests and Agenda Setting in the US Supreme Court" 82 *APSR* 1109 (1989)
McGuire and Caldeira: "Lawyers, Organized Interests, and the Law of Obscenity" 87 *APSR* 717 (1993)
Cameron, Segal and Songer: "Strategic Auditing in the Judicial Hierarchy" 94 *APSR* 101 (2000)

Recommended

Baum, L. (1977). "Policy Goals in Judicial Gatekeeping: A Proximity Model of Discretionary Jurisdiction." *American Journal of Political Science* 21: 13-35
Brenner, S. (2000). "Granting Certiorari by the United States Supreme Court: An Overview of the Social Science Studies." *Law Library Journal* 92, 193.
Cordray, M. M. and R. A. Cordray. (2004). "The Philosophy of Certiorari: Jurisprudential Considerations in Supreme Court Case Selection." *Washington University Law Quarterly* 82, 389.
Hammond, T. H., Bonneau, C. W., and Sheehan, R. S. (2005) *Strategic Behavior & Policy Choice on US Supreme Court*. Stanford University Press
Lax, J., R., (2003) "Certiorari and Compliance in the Judicial Hierarchy: Discretion, Reputation and the Rule of Four." *Journal of Theoretical Politics*, 15(1), 61-86
Leiman, J. M. (1957). "The Rule of Four." *Columbia Law Review* 57(7), 975-992
Linzer, P. (1979). "The Meaning of Certiorari Denials." *Columbia Law Review* 79, 1227-1600.
Palmer, J. (1982). "An Econometric Analysis of the U.S. Supreme Court's Certiorari Decisions." *Public Choice* 39: 387-98
Provine, D. M. (1980). *Case Selection in the United States Supreme Court*. Chicago: University of Chicago

Week 6 (October 1):
No Class – Rosh Hashana

Week 7 (October 8):
No Class – Yom Kippur

Week 8 (October 15):
The Decision on the Merits – The Legal and Attitudinal Models
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)

Recommended

Segal and Spaeth. *Majority Rule or Minority Will: Adherence to Precedent on the US Supreme Court*. Cambridge University Press

Segal and Cover (1989) "Ideological Values and the Votes of US Supreme Court Justices" *The American Political Science Review* 83(2): 557-565

Epstein and Carol (1996) "Measuring Political Preferences" *American Journal of Political Science* 40(1): 261-294

Martin and Quinn (2002) "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the US Supreme Court, 1953-1999". *Political Analysis* 10: 134-53

Week 9 (October 22):

Presentation of research proposals (in poster format)

Week 10 (October 29):

Opinion Assignment and Coalitions

Smaltzbeck, *Crafting Law on the Supreme Court* (2000)

Epstein and Knight. *The Choices Justices Make* (1998)

Recommended

Lax, J., R., (2007) "Constructing Legal Rules on Appellate Courts." *American Political Science Review*

Lax, J., R., and Cameron, C. M. (2007) "Bargaining and Opinion Assignment on the U.S. Supreme Court" *Journal of Law, Economics and Organization*.

Murphy, W. F. (1964). *Elements of Judicial Strategy*. Chicago: University of Chicago Press

Epstein et al. (2001). "The Norm of Consensus on the US Supreme Court." *AJPS* 45-2

Hammond, T. H., Bonneau, C. W., and Sheehan, R. S. (2005) *Strategic Behavior & Policy Choice on US Supreme Court*. Stanford University Press

Week 11 (November 5):

Marksist Models of the Court: Separation of Powers Games

Clinton, "Game Theory, Legal History, and the Origins of Judicial Review" 38 *AJPS* 285 (1994)

Eskridge, "Reneging on History?" 79 *California Law Review* 613 (1991)

Spiller and Gely, "Congressional Control or Judicial Independence" *Rand Journal of Economics* (1992)

Hettinger et al. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the US Courts of Appeals" 48 *AJPS* 123 (2004)

Segal and Spaeth (2002) Ch. 8, second half

Recommended

Ignagni and Meernick, "Judicial Review and Coordinate Construction of the Constitution" 41 *AJPS* 447

Clayton and Gillman, chapters 2, 3, 13

Murphy, W. F. (1964). *Elements of Judicial Strategy*. Chicago: University of Chicago Press

Bueno de Mesquita and Stephenson (2002). "Informative Precedent and Intrajudicial Communication," *APSR* 96(4): 755-766

Week 12 (November 12):

Institutional and Environmental Constraints

Hierarchies

Songer, Cameron, Segal. "The Hierarchy of Justice ... " 38 AJPS 673 (1994)

Cameron, Segal and Songer: "Strategic Auditing in the Judicial Hierarchy" 94 *APSR* 101 (2000)

Public Opinion

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, Reponse, 88 *APSR* 716 (1994)

Mishler and Sheehan. "Public Opinion, the Attitudinal Model ..." 58 *JoP* 169 (1996)

Lawyers, Guns and Money

McGuire. "Repeat Players in the Supreme Court..." *JoP* (1995)

Espstein and Rowland. "Debunking the Myth of Interest Group Invincibility ..." 85 *APSR* 205 (1991)

Week 13 (November 19):

Impact of Judicial Decisions

Rosenberg, The Hollow Hope

Flemming et al. "One Voice Among Many ..." 41 *AJPS* 1224 (1997).

Donohue and Levitt. "The Impact of Legalized Abortion on Crime." 116 *Quarterly Journal of Economics* 379 (2001)

Ansolabehere et al. "Equal Voters, Equal Money ..." 96 *APSR* 767 (2002)

On Public Opinion

Hoekstra and Segal. "The Shepherding of Local Public Opinion." 58 *JoP* 1079

Johnson and Martin. "The Public's Conditional Response to Supreme Court Decisions." 92 *APSR* 299 (1998).

Week 14 (November 26):

No Class – Thanksgiving

Week 15 (December 3):

Presentation and discussion of final papers

Final papers due