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.

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

- **Option A** requires students to complete a combination of four short papers (about 4 to 6 pages). Short papers will react to the week’s readings over the course of the semester. You will have discretion over which weeks you can write papers, subject to the constraint that two papers must be completed in the first seven weeks of the semester (i.e. before Fall Break). These papers must be emailed to me no later than 10 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
2) **Option B** requires students to write one short review paper 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 November 15th. 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 created a zip file with the all the required readings that can be accessed on Blackboard.

I have ordered the following books for purchase at Labyrinth.


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).

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 (9/18) Why study courts? And how?
- Week 2 (9/25) The “Legal Model”, the Attitudinal Model and the “Strategic Model”
- Week 3 (10/2) Measuring Judicial Ideology
- Week 4 (10/9) Modeling Collegial Courts and Modeling Law I—Legal Rules and Doctrine
- Week 5 (10/16) Modeling Collegial Courts and Modeling Law II: Precedent
- Week 6 (10/23) The Judicial Hierarchy I— Team Models/Learning
- Week 7 (11/6) The Judicial Hierarchy II— Agency Models
- Week 8 (11/13) The Judicial Hierarchy III—Peer effects on appellate courts
- Week 9 (11/20) Bargaining and Power on The U.S. Supreme Court
- Week 10 (11/27) Agenda Setting and Case Selection
- Week 11 (12/4) Separation of Powers Games
- Week 12 (12/11) 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. In addition, the syllabus leans towards the institutional side of the subfield than the behavioral side (though we will read several behavioral classics). If you’re interested in exploring topics outside those we cover, either through independent study or for your research paper, please let me know.
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”, the Attitudinal Model and the “Strategic Model”
(Note the amount of reading this week is heavier than most.)

- Segal, Jeffrey, and Harold J. Spaeth. 2002. The Supreme Court and the Attitudinal Model Revisited. Cambridge University Press: New York. Chapters 1, 2, 3 (skip the Separation of Powers section for now), Chapter 7 (pp. 288-311) and Chapter 8 (again skip the Separation of Powers section).
- Symposium on The Supreme Court and the Attitudinal Model. 1994.
- Symposium on The Supreme Court and the Attitudinal Model Revisited. 2003.

Recommended

**Legal Model**

- 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

**Attitudinal Model**


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


“Strategic Model”

Week 3: Measuring Judicial Ideology


**Recommended**

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


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: Precedent


Recommended

Week 6: The Judicial Hierarchy I—Team Models/Learning


Recommended

Week 7: The Judicial Hierarchy II—Agency Models

- 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**

Week 8: The Judicial Hierarchy III—Peer Effects on Appellate Courts


**Recommended**

Week 9: Bargaining and Power on The U.S. Supreme Court


**Recommended**

Week 10: Agenda Setting and Case Selection


**Recommended**

- Charles Epp, *The Rights Revolution*
Week 11: The Separation of Powers


Recommended

- 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.)
- Jeffrey K. Staton, “Constitutional Review and the Selective Promotion of Case Results.” *APJS*
Week 12: Courts, Public Opinion and Elections


Recommended