

**POLS 538: JUDICIAL PROCESS AND POLICY-MAKING**  
**FALL 2007**

**FANER HALL 3173**  
**WEDNESDAY, 5:00 – 7:30 P.M.**

**PROFESSOR:** Scott Comparato  
**OFFICE:** Faner 3165  
**OFFICE HOURS:** MF 8:00 – 10:00 a.m.

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**COURSE DESCRIPTION/PURPOSE**

The purpose of this course is to introduce students to the field of judicial process and policy-making. Rather than focusing on judicial decision making, this course is more broadly constructed to include research on the stages of the legal process and the various actors in the system. We will devote a substantial amount of attention on understanding the institutional structure of the American court system, including state trial and appellate courts, as well as district and circuit courts at the federal level, in addition to the Supreme Court. Substantial attention will be given to the actors most heavily involved in the system such as litigants, lawyers, and interest groups. The course also includes content on the impact of judicial decisions and the role of courts in the policy-making process.

Aside from the substantive content of the course, my goals are to: (1) introduce graduate students to the literature in judicial process and policy-making and, in so doing, discuss some of the most important debates (both past and present) in the sub-field; and (2) underscore the importance of sound theoretical arguments, careful research designs, and compelling empirical results. We will focus on the scientific study of the judiciary, analyzing the substantive, theoretical, and methodological developments in the field.

**REQUIRED READING/TEXTS**

Most of the readings for this course will come from political science journals and law reviews. The majority of these articles will be made available to you on [Blackboard](#). Other readings will be placed in the POLS 538 mailbox in the main office mailroom. Please copy and return them as quickly as possible so that others will have access to them as well.

The books listed below are required for this course. I do reserve the right to make changes to the readings throughout the semester, and there may be additional books required. I will provide you adequate notice of any changes in the reading schedule, or if any additional texts are required.

- Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.
- Haltom, William, and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago: University of Chicago Press.
- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- Pacelle, Richard. 2003. *Between Law and Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Rights Litigation*. College Station: Texas A&M University Press.
- Peltason, J.W. 1961. *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation*. New York: Harcourt, Brace, and World.
- Rosenberg, Gerald. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.
- Tate, C. Neal, and Torbjorn Vallinder. 1995. *The Global Expansion of Judicial Power*. New York: New York University.

I do not assume prior knowledge of the judicial process, though it is certainly helpful. For those who are unfamiliar with the basic operations of the courts may wish to consult sources on the subject. Some of the following texts may be helpful to you: Walker and Epstein's *The Supreme Court of the United States: An Introduction* or Lawrence Baum's *The Supreme Court* for general information on the Supreme Court. For information on lower courts, I suggest *Judicial Process in America*, by Robert Carp and Ronald Stidham, or Lawrence Baum's *American Courts*. Students seeking to conduct

dissertation work in the field of law and courts should consider purchasing *The Supreme Court Compendium*, 4<sup>th</sup> ed. (2007) by Lee Epstein, et. al. It contains valuable data and information on the Supreme Court and its environment. At some point in the semester, we will spend some time discussing other sources from which you can obtain data on the courts, including the *ICPSR*, and directly from other scholars in the field.

## **GRADES**

Your grades will be based on seminar participation (20%), a critical analysis paper (20%), weekly analysis papers (20%), and a research paper (40%). There will be no incompletes given in this class except in cases of emergency or where university policy applies.

## **GRADING**

## **GRADING SCALE (PERCENTAGES)**

Class Participation	100 points (20%)
Critical Analysis Paper	100 points (20%)
Weekly Papers	100 points (20%)
<u>Research Paper</u>	<u>200 points (40%)</u>
<b>Total</b>	<b>500 points</b>

<b>A</b>	90 – 100
<b>B</b>	80 – 89
<b>C</b>	70 – 79
<b>D</b>	60 – 69
<b>F</b>	59 – Below

## **COURSE REQUIREMENTS**

### **CLASS PARTICIPATION (20%)**

I expect you to attend seminar meetings and to be prepared for each session. By prepared, I mean that you should have read the assigned materials and considered how they complement and contrast each other. Each week, one student will act as a discussion leader for the assigned readings. I will always want to provide an introduction to the material for that week, and highlight some of the issues brought up in your analysis papers. At that point, the discussion leader will take over. As discussion leader, you are responsible for emphasizing key themes and bringing to light controversies, and posing questions to direct our discussion. Each student will be responsible for leading discussion at least twice during the semester. The actual number will be dictated by the number of students in the class, but you will not be required to lead discussion on two consecutive weeks. You will meet with me the Monday preceding the class for which you will serve as the discussion leader to review the material and discuss your plans for that week.

On the weeks that you are a discussion leader, you must submit no fewer than five discussion questions that will guide our discussion for that week. These questions are to be emailed to everyone in the class via *Blackboard* no later than 8:00 a.m. on the day of class. All students should review those questions and prepare to engage the discussion leaders on those issues during class.

You should also come to each class prepared to answer the following questions for each of the assigned readings:

- What do you see as the major themes of the reading generally?
- What questions of clarification do you have?
- What is the theoretical motivation of the author and into what larger theoretical perspective does it fall?
- What are the hypotheses offered by the author?
- What data are used? How are those data collected and analyzed? What conclusions does the author draw from that analysis?
- What does the reading contribute to our understanding of court structure, the various actors, or the role of the courts in the political system?
- What criticisms do you have of the reading: Is there a theory?; Do the hypotheses follow from the theory?; Are the data appropriate to answer the question posed or should alternative or supplementary data be collected?; Is the analysis of the data sound?; Do the conclusions follow from the theory and data?

The success of this class depends, in large part, on the regular and robust participation of students. Failure to attend and participate consistently will have an adverse impact on the learning experience of everyone in the class. If you must miss class for some reason, you may receive an excused absence if you contact the instructor in advance, although I reserve the right to decide what constitutes a reasonable excuse. Each unexcused absence will result in a ten point reduction in your overall grade.

### **CRITICAL ANALYSIS PAPER (20%)**

Each student will choose one of the topics on the syllabus for in-depth analysis. I will assign a book or set of articles on that topic for you to read and write a critical analysis paper of approximately five pages. The purpose of these papers is to help develop your ability to read and critique the work of other scholars. In these papers, I expect you to address the theoretical motivation of the work, the data marshaled in support of the authors' argument and the soundness of the conclusions. The papers are due on the day that topic is scheduled for discussion in class. All students must make their choices by **September 12<sup>th</sup>**, and I will not allow multiple students to write on the same topic, so choose early.

### **WEEKLY ANALYSIS PAPERS (20%)**

Each week, you are responsible for writing a one page, single-spaced, analysis paper focusing on the issues and themes in the reading. You should include questions, comments, and analysis that you have about the concepts, theory, and methods encountered in the reading. These analysis papers will supplement the material that I intend to cover in class, and help to motivate our discussion. These do not need to be polished products, but I want you to demonstrate that you are thinking critically about the work, the issues brought out by the authors, and the implications of the findings. Papers are due in my mailbox by 8:00 a.m. every Tuesday morning.

### **RESEARCH PAPER (40%)**

Each student is required to write a 15 – 20 page paper on a topic related to judicial process. Your paper should take the form of an article length manuscript, suitable for publication in a political science, or similar social science journal. I will provide you with more guidance on the proper style, format, and construction as the semester progresses, but generally your paper must contain the following sections:

- **Introduction:** This should include your primary question, or problem that you intend to address, and a discussion of the significance of this issue and why it is worthy of study.
- **Theory:** In this section you should develop the theoretical motivation for your work, and demonstrate considerable familiarity with the relevant literature on the topic.
- **Expectations/Hypotheses:** Here you should discuss the specific hypotheses derived from your theory and the model you plan to employ to test these hypotheses.
- **Measurement/Data:** Explain how you plan to evaluate whether you have answered the questions that you propose and the data sources you use to answer those questions.
- **Analysis/Results:** Explain your results in detail, tying them back into your theory, and clearly discuss how they support (or do not support) your hypotheses.
- **Conclusion:** In this section, you should summarize your findings, how you have contributed to our current understanding of the issue, as well as speculating on future directions of research in this area.

Much of the material that we will cover in this class will make use of advanced formal and statistical methods. You should not feel that writing an empirically driven paper requires you to employ such methods, but you should make use of the multitude of data sources that are available (or collect your own) in completing your paper. As soon as possible, look through the syllabus and begin identifying topics that might be of interest to you. You must identify a topic and clear it with me by **September 19<sup>th</sup>** so that you have enough time to identify the relevant literature, obtain and analyze the data, and write the paper.

You will present the results of your research as part of the department-wide graduate student research symposium. The symposium is scheduled for December 10<sup>th</sup>, from 8:00 – 10:00 a.m. (though that date and time may change), and you will present your research in poster format and be available to discuss your findings and answer questions.

### **COURSE WEB PAGE**

This course will be managed using [Blackboard](#). Detailed instructions to assist you in creating an account and adding this course can be accessed from the [Morris Library](#) main page. You will have access to all course information, including the syllabus, course schedule, reading assignments, resources for your papers, discussion boards, and an email system to contact me or other students in the class. I will regularly post messages regarding the reading, schedule, assignments, and grades to the course page. Therefore, you should make a habit of checking the course page on a daily basis to keep up with reading assignments and other course related announcements. There are numerous computer labs on campus, so access to *Blackboard* should not be a problem. You may also access information related to the course from the [course web page](#).

### **ACADEMIC INTEGRITY**

To paraphrase the immortal George Clinton: “Don’t fake the funk.” Put simply, you are responsible for your own work. It is considered cheating to submit someone else’s work as your own. Using information from another source (book, article, internet site, another student, etc.) without properly crediting the author is plagiarism. Direct quotations, paraphrased information, and the general use of another person’s idea must be properly referenced in your work. During exams, you are not allowed external aids (notes, books, etc.). The penalty for violations such as plagiarism, cheating, or other misconduct will result in a failing grade in the course, and may result in a formal charge of misconduct as outlined in the [University Student Conduct Code](#), possibly leading to further sanctions, including suspension or expulsion from the graduate program and the University. As graduate students, you are expected to conduct yourselves in a professional manner, and failure to follow these guidelines

Specific actions (though not exhaustive) that constitute academic misconduct:

- Unauthorized group work
- Submitting work from other courses without authorization
- Representing the work, writing, or ideas of another person as your own

If you have any questions about what constitutes cheating and plagiarism, contact the Southern Illinois University office of Academic Advising, or view the [Policies and Procedures](#) of the University.

### **DISABILITIES**

Students with disabilities who require individualized testing or other accommodations should identify themselves to me immediately. Every effort will be made to accommodate your needs. [Disabilities Support Services](#) can assist you with testing, note-taking, and accessibility issues.

### **CONTACTING ME**

You are always welcome to stop by my office during office hours to discuss questions/issues related to the course or other academic matters. I am happy to make appointments outside of my office hours if you are unable to stop by during those times. You may also contact me by phone or email via *Blackboard*.

### **EMERGENCY PROCEDURES**

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on the BERT website at [www.bert.siu.edu](http://www.bert.siu.edu), Department of Public

Safety's website [www.dps.siu.edu](http://www.dps.siu.edu) (disaster drop down) and in the Emergency Response Guidelines pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

### COURSE OUTLINE/READINGS<sup>1</sup>

#### I. LAWYERS (AUGUST 29<sup>TH</sup>)

##### REQUIRED READING

- Haltom, William, and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago: University of Chicago Press.
- Nelson, Robert, and John P. Heinz. 1988. "Lawyers and the Structure of Influence in Washington." *Law & Society Review*. 22: 237-300.
- McGuire, Kevin T. 1993. "Lawyers in the U. S. Supreme Court: The Washington Community and Legal Elites." *American Journal of Political Science*. 37: 365-390.
- \_\_\_\_\_. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics*. 57: 187-196.
- \_\_\_\_\_. 1998. "Explaining Executive Success in the U.S. Supreme Court" *Political Research Quarterly*. 51 (June): 505-26.

##### RECOMMENDED READING

- Abel, Robert. 1991. *American Lawyers*. New York: Oxford University Press.
- Epstein, Cynthia. 1981. *Women in Law*. New York: Basic Books.
- Galanter, Marc, and Thomas Palay. 1991. *Tournament of Lawyers: The Transformation of the Big Law Firm*. Chicago: University of Chicago Press.
- Gilboy, Janet. 1981. The Social of Organization of Legal Services to Indigent Defendants. *American Bar Foundation Research Journal* 1981:1023-48.
- Hagan, John, and Fiona Kay. 1995. *Gender in Practice: A Study of Lawyers' Lives*.
- Heinz, John P., and Edward O. Laumann, with Robert Nelson and Paul S. Schnorr. 1997. The Constituencies of Urban Elite Lawyers. *Law & Society Review* 31:441-472.
- Heinz, John P., and Edward O. Laumann. 1978. The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies. *Michigan Law Review* 76:1111-1142.
- Heinz, John P., and Edward O. Laumann. 1982. *Chicago Lawyers: The Social Structure of the Bar*. New York: Russell Sage Foundation.
- Kessler, Mark. 1987. *Legal Services for the Poor: A Comparative and Contemporary Analysis of Interorganizational Politics*. Westport, CT: Greenwood.
- Landon, Donald D. 1988. LaSalle Street and Main Street: The Role of Context in Structuring Law Practice. *Law & Society Review* 22:213-236.
- Lawrence, Susan E. 1990. *The Poor in Court: The Legal Services and Supreme Court Decision Making*. Princeton: Princeton University Press.
- Macauley, Stewart. 1979. Lawyers and Consumer Protection Laws. *Law & Society Review* 14:115-171.
- McGuire, Kevin T. 1993. *The Supreme Court Bar: Legal Elites in the Washington Community*. Charlottesville, VA: University Press of Virginia.
- Monsma, Karl, and Richard Lempert. 1992. The Value of Counsel: 20 Years of Representation Before a Public Housing Eviction Board. *Law & Society Review* 26:627-668 (1992).
- Nelson, Robert L. 1988. *Partners With Power: The Social Transformation of the Large Law Firm*.

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<sup>1</sup> I reserve the right to make changes to the reading assignments and the dates that material will be covered as necessary.

Nelson, Robert L., John P. Heinz, Edward Laumann, and Robert H. Salisbury. 1987. Private Representation in Washington: Surveying the Structure of Influence. *American Bar Foundation Research Journal* 1987:141-202.

Sarat, Austin, and William Felstiner. 1986. Law and Strategy in the Divorce Lawyer's Office. *Law & Society Review* 20:93-134.

## **II. THE DECISION TO LITIGATE (SEPTEMBER 5<sup>TH</sup>)**

### **Required Reading**

McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.

McIntosh, Wayne. 1983. "Private Use of a Public Forum: A Long Range View of the Dispute Processing Role of the Courts." *American Political Science Review*. 77: 991-1010.

Priest, George, and Benjamin Klein. 1984. "The Selection of Disputes for Litigation." *Journal of Legal Studies*. 13: 1-55.

Galanter, Marc. 1983. "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society." *UCLA Law Review*. 31: 4-71.

### **Recommended Reading**

Baird, Douglas C., Robert H. Gertner, and Randal C. Picker. 1994. *Game Theory and the Law*. Cambridge: Harvard University Press.

Che, Yeon-Koo, and Jong Goo Yi. 1993. "The Role of Precedents in Repeated Litigation." *Journal of Law, Economics, and Organization* 9(2):399-424.

Ellickson, Robert C. 1991. *Order Without Law: How Neighbors Settle Disputes*. Cambridge: Harvard University Press.

Friedman, Lawrence M., and Robert V. Percival. 1976. A Tale of Two Courts: Litigation in Alameda and San Benito Counties. *Law & Society Review* 10:267-301.

Giles, Michael, and Thomas D. Lancaster. 1989. Political Transition, Social Development, and Legal Mobilization. *American Political Science Review* 83:817-834.

Jacob, Herbert. 1989. Another Look at No-Fault Divorce and the Post-Divorce Finances of Women. *Law & Society Review* 23:95-116.

Jacob, Herbert. 1992. "The Elusive Shadow of the Law." *Law and Society Review* 26(): 565-590.

Kagan, Robert A. 1984. The Routinization of Debt Collection: An Essay on Social Change and Conflict in the Courts. *Law & Society Review* 18:323-371.

Kritzer, Herbert. 1990. *Let's Make a Deal: Understanding the Negotiation Process in Ordinary Litigation*. Madison: University of Wisconsin Press.

Kritzer, Herbert. 1990. *The Justice Broker: Lawyers and Ordinary Litigation*. New York: Oxford University Press.

Kritzer, Herbert. 1986. "Adjudication to Settlement: Shading in the Gray." *Judicature* 70:160-165.

Kritzer, Herbert. 1991. *Let's Make a Deal*. Madison: University of Wisconsin Press.

Macauley, Stewart. 1963. Non-Contractual Relations in Business: A Preliminary Study. *American Sociological Review* 28:55-67.

McIntosh, Wayne, "Courts and Socioeconomic Change," in John B. Gates and Charles A. Johnson (eds.), *The American Courts* (1990), 281-303.

Miller, Richard E., and Austin Sarat. 1980-1981. Grievances, Claims, and Disputes: Assessing the Adversary Culture. *Law & Society Review* 15:525-565.

Nardulli, Peter F., Roy B. Flemming, and James Eisenstein. 1984. "Unraveling the Complexities of Decision Making in Face-to-Face Groups: A Contextual Analysis of Plea-Bargained Sentences." *American Political Science Review* 78(December): 912-928.

Posner, Richard. 1985. *The Federal Courts: Crisis and Reform*. Cambridge: Harvard University Press.

Priest, George. 1980. "Selective Characteristics of Litigation." *Journal of Legal Studies* 9:399-427.

Sarat, Austin, and Joel B. Grossman. 1975. Courts and Conflict Resolution: Problems in the Mobilization of Adjudication. *American Political Science Review* 69:1200-17.

Sheehan, Reginald S., William Mishler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties before the Supreme Court." *American Political Science Review* 86:464-471.

Wanner, Craig. 1975. The Public Ordering of Private Relations. *Law & Society Review* 8:421-440; 9:293-306.

### **III. INTEREST GROUPS IN LITIGATION (SEPTEMBER 12<sup>TH</sup>)**

#### **Required Reading**

- Olson, Susan M. 1990. "Interest Group Litigation in Federal District Court: Beyond the Political Disadvantage Theory." *Journal of Politics*. 52: 854-882.
- Scheppele, Kim, and Jack L. Walker. 1991. "The Litigation Strategies of Interest Groups." In Jack L. Walker, *Mobilizing Interest Groups in America*. Ann Arbor: University of Michigan Press. pp. 157-184.
- McGuire, Kevin T. 1994. "Amici Curiae and Strategies for Gaining Access to the Supreme Court." *Political Research Quarterly*. 47: 821-838.
- Spriggs, James II, and Paul Wahlbeck. 1997. "Amici Curiae and the Role of Information in the Supreme Court." *Political Research Quarterly*. 50: 365-386.
- McGuire, Kevin T., and Gregory A. Caldeira. 1993. "Lawyers, Organized Interests, and the Law of Obscenity: Agenda Setting in the Supreme Court." *American Political Science Review*. 87: 717-226.
- Songer, Donald R., and Ashlyn Kuersten. 1995. "The Success of Amici in State Supreme Courts." *Political Research Quarterly*. 48: 31-42.
- Stewart, Joseph, Jr., and James F. Sheffield, Jr. 1987. "Does Interest Group Litigation Matter? The Case of Black Political Mobilization in Mississippi." *Journal of Politics*. 49: 780-798.

#### **Recommended Reading**

- Gregory A. Caldeira and John R. Wright, "Amici Curiae Before the Supreme Court: Who Participates, When, and How Much?" *Journal of Politics* 52 (August 1990), 782-806.
- James F. Spriggs, II, and Paul J. Wahlbeck, "Amicus Curiae and the Role of Information at the Supreme Court," *Political Research Quarterly* 50 (June 1997), 365-86.
- Lee Epstein and C. K. Rowland, "Debunking the Myth of Interest Group Invincibility in the Courts," *American Political Science Review* 85 (March 1991), 205-17.
- Lee Epstein, "Interest Group Litigation During the Rehnquist Court Era," *Journal of Law & Politics* 9 (Summer 1993), 639-717.
- Lee Epstein, *Conservatives in Court* (1985).
- Lee Epstein and Joseph F. Kobylka, *The Supreme Court and Legal Change: Abortion and the Death Penalty* (1992).
- Joseph D. Kearney and Thomas W. Merrill, "The Influence of Amicus Curiae Briefs on the Supreme Court," *University of Pennsylvania Law Review* 148 (January 2000).
- Lynn Mather, "Theorizing About Trial Courts: Lawyers, Policymaking, and Tobacco Litigation," *Law & Social Inquiry* 23 (Fall 1998), 897-940.
- Donald R. Songer and Reginald S. Sheehan, "Interest Group Success in the Courts: Amicus Participation in the Supreme Court," *Political Research Quarterly* 46 (June 1993), 339-54.
- Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (1994).
- Joseph F. Kobylka, *The Politics of Obscenity: Group Litigation in a Time of Legal Change* (1991).
- Susan Lawrence, *The Poor in Court: The Legal Services Program and Supreme Court Decision Making* (1990).
- Karen O'Connor, *Women's Organizations' Use of the Courts* (1980).
- Frank J. Sorauf, *The Wall of Separation: The Constitutional Politics of Church and State* (1976).
- Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court. 1936-1961* (1994).
- Clement E. Vose, *Constitutional Change* (1972).
- Stephen L. Wasby, *Race Relations Litigation in an Age of Complexity* (1995).

### **IV. WINNERS AND LOSERS (SEPTEMBER 19<sup>TH</sup>)**

#### **Required Reading**

- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy Maker." *Journal of Public Law*. 6 (Fall): 279-95.
- Casper, Jonathan. 1976. "The Supreme Court and National Policy-Making." *American Political Science Review*. 70 (March): 50-73.

- Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review*. 9: 95-160.
- Wheeler, Stanton, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman. 1987. "Do the 'Haves' Come Out Ahead?: Winning and Losing in State Supreme Courts, 1870-1970." *Law & Society Review*. 21: 403-445.
- Sheehan, Reginald S., William Mishler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court." *American Political Science Review*. 86: 464-471.

### **Recommended Reading**

- Henry Steele Commager, "Judicial Review and Democracy," *Virginia Quarterly Review* 19 (Summer 1943), 417-428.
- Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (1998).
- Russell Galloway, *Justice for All? The Rich and Poor in Supreme Court History 1790-1990* (1991).
- Robert H. Jackson, *The Struggle for Judicial Supremacy* (1941).
- Robert G. McCloskey, revised by Sanford Levinson, *The American Supreme Court*. 3<sup>rd</sup> ed. (2000).
- Richard L. Pacelle Jr., *The Evolution of the Supreme Court's Agenda From the New Deal to the Reagan Administration* (1991).
- L. A. Scot Powe, *The Warren Court and American Politics* (2000).
- Glendon Schubert, *The Constitutional Polity* (1970).
- Bernard Schwartz, ed. *The Burger Court: Counter-Revolution or Confirmation?* (1998).
- Christopher E. Smith, *Courts and the Poor* (1991).

### **V. JUDICIAL SELECTION (SEPTEMBER 26<sup>TH</sup>)**

#### **Required Reading**

- Baum, Lawrence. 1995. "Electing Judges." In *Contemplating Courts*. Lee Epstein (ed.). Washington: CQ Press. pp. 18-43.
- Cameron, Charles, Albert Cover, and Jeffrey Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model." *American Political Science Review*. 84: 513-524.
- Segal, Jeffrey A., Charles M. Cameron, and Albert D. Cover. 1992. "A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents, and Interest Groups in Supreme Court Confirmations." *American Journal of Political Science*. 36: 96-121.
- Johnson, Timothy, and Jason Roberts. 2004. "The Use of Presidential Capital During the Supreme Court Confirmation Process." *Journal of Politics*. 66: 663-683.
- Caldeira, Gregory A., and John R. Wright. 1998. "Lobbying for Justice: Organized Interests, Supreme Court Nominations, and the United States Senate." *American Journal of Political Science*. 42: 499-523.
- Maltzman, Forrest, and Sarah Binder. 2002. "Senatorial Delay in Confirming Federal Judges." *American Journal of Political Science*. 46 (January): 190-199.

#### **Recommended Reading**

- "Judicial Selection in the States: A Critical Study with Proposals for Reform." 1976. *Hofstra Law Review*. 4: 267-320.
- Abraham, Henry. 1999. *Justices and Presidents and Senators*. 2d ed. New York: Rowman and Littlefield.
- Aspin, Larry T. 1999. "Trends in Judicial Retention Elections, 1964-1998." *Judicature*. 83(2): 79-81.
- Aspin, Larry T. and William K. Hall. 1994. "Retention Elections and Judicial Behavior." 77 *Judicature* 6: 306-315.
- Baum, Lawrence. 1983. "The Electoral Fates of Incumbent Judges in the Ohio Court of Common Pleas." *Judicature*. 66:42-50.
- Baum, Lawrence. 1987. *Explaining the Vote in Judicial Elections: The 1984 Ohio Supreme Court Elections*. *Western Political Quarterly* 40:361-371.
- Baum, Lawrence. 1987. *Information and Party Voting in Semi-Partisan Judicial Elections*. *Political Behavior* 9:62-74.
- Baum, Lawrence. 1988-1989. *Voters' Information in Judicial Elections: The 1986 Contests for the Ohio Supreme Court*. *Kentucky Law Journal* 77:645-670.
- Carbon, Susan B. 1980. "Judicial Retention Elections: Are They Serving Their Intended Purpose?" 64 *Judicature* 5: 210-233.
- Chase, Harold W. 1972. *Federal Judges: The Appointing Process*. Minneapolis: University of Minnesota Press.



- Dubois, Philip. 1980. *From Ballot to Bench: Judicial Elections and the Quest for Judicial Accountability*. Austin: University of Texas Press.
- Dubois, Philip. 1984. Voting Cues in Nonpartisan Trial Court Elections: A Multivariate Assessment. *Law & Society Review* 18:395-436.
- Flango, Victor Eugene, and Craig R. Ducat. 1979. "What Difference Does Method of Judicial Selection Make?" *Justice System Journal*. 5: 25-44.
- Goldman, Sheldon. 1990. Federal Judicial Recruitment. In John B. Gates and Charles A. Johnson (eds.), *The American Courts*. Pp. 189-210.
- Goldman, Sheldon. 1997. *Picking Federal Judges*. New Haven: Yale University Press.
- Griffin, Kenyon N. And Michael J. Horan. 1979. "Merit Retention Elections: What Influences the Voters?" *Judicature* 63 (2): 78-88.
- Grossman, Joel B. 1965. *Lawyers and Judges: The ABA and the Politics of Judicial Selection*. New York: John Wiley.
- Hall, Kermit. 1979. *The Politics of Justice: Lower Federal Judicial Selection and the Second Party System 1829-61*. Lincoln: University of Nebraska Press.
- Hojnacki, Marie, and Lawrence Baum. 1992. "New-Style" Judicial Campaigns and the Voters: Economic Issues and Union Members in Ohio. *Western Political Quarterly* 45:921-948.
- Kagan, Robert A., Bobby D. Infelise, and Robert R. Detlefsen. 1988. American State Supreme Court Justices, 1900-1970. *American Bar Foundation Research Journal* 1984:371-408.
- Maltese, John Anthony. 1995. *The Selling of Supreme Court Nominees*. Baltimore: Johns Hopkins University Press.
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## **VI. FEDERAL DISTRICT COURTS (OCTOBER 3<sup>RD</sup>)**

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## **VIII. STATE SUPREME COURTS (OCTOBER 17<sup>TH</sup>)**

### **Required Reading**

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- Brace, Paul, and Melinda Gann Hall. 1990. "Neo-Institutionalism and Dissent in State Supreme Courts." *Journal of Politics*. 52 (1): 54-70.

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## **IX. INTER-COURT RELATIONS (OCTOBER 24<sup>TH</sup>)**

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- Canon, Bradley, and Lawrence Baum. 1981. "Patterns of Adoption of Tort Law Innovations: An Application of Diffusion Theory to Judicial Doctrines." *American Political Science Review*. 75: 975-987.
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- Baum, Lawrence. 1990. Courts and Policy Innovation. In John B. Gates and Charles A. Johnson (eds.), *The American Courts*. Pp. 413-433.
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- Merryman, John H. 1977. Toward a Theory of Citations: An Empirical Study of the Citation Practice of the California Supreme Court in 1950, 1960, and 1970. *Southern California Law Review* 50:381-428.
- Davies, Thomas Y. 1982. Affirmed: A Study of Criminal Appeals and Decision-Making Norms in a California Court of Appeal. *American Bar Foundation Research Journal* 1982:543-648.

## **X. INTER-INSTITUTIONAL RELATIONS PART I: COURT/CONGRESS (OCTOBER 31<sup>ST</sup>)**

### **Required Reading**

- Rogers, James. 2001. "Information and Judicial Review: A Signaling Game of Legislative-Judicial Interaction." *American Journal of Political Science*. 45 (1): 84-99.
- Vanberg, George. 2001. "Legislative-Judicial Relations: A Game Theoretic Approach to Constitutional Review." *American Journal of Political Science*. 45 (2): 346-361.
- Hausseger, Lori, and Lawrence Baum. 1999. "Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation." *American Journal of Political Science*. 43 (1): 162-185.
- Gates, John B. 1987. "Partisan Realignment, Unconstitutional State Policies, and the U.S. Supreme Court, 1837-1964." *American Journal of Political Science*. 31: 259-280.

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- Casper, Jonathan D. 1976. The Supreme Court and National Policy-Making. *American Political Science Review* 70:50-63.
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- Eskridge, William N. and John Ferejohn. 1992. "The Article I, Section 7 Game." *Georgetown Law Journal*. 80(February): 523-564.
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- Murphy, Walter F. 1962. *Congress and the Court*. Chicago: University of Chicago Press.
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- Schmidhauser, John, and Larry L. Berg. 1972. *Congress and the Supreme Court: Conflict and Interaction, 1945-1968*. New York: Free Press.
- Segal, Jeffrey A. 1990. Courts, Executives, and Legislatures. In John B. Gates and Charles A. Johnson (eds.), *The American Courts*. Pp. 373-397.
- Segal, Jeffrey A. 1997. "Separation-of-Powers Games in the Positive Theory of Congress and Courts." *American Political Science Review* 91: 28.
- Spiller, Pablo and Rafael Gely. 1992. "Congressional Control or Judicial Independence." *RAND Journal of Economics* 4:463.

## **XI. INTER-INSTITUTIONAL RELATIONS PART II: COURT/EXECUTIVE (NOVEMBER 7<sup>TH</sup>)**

### **Required Reading:**

- Pacelle, Richard. 2003. *Between Law and Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Rights Litigation*. College Station: Texas A&M University Press.
- Knight, Jack, and Lee Epstein. 1996. "On the Struggle for Judicial Supremacy." *Law and Society Review*. 30 (1): 87-130.
- Fisher, Louis. 1990. "Is the Solicitor General an Executive or a Judicial Agent?: Caplan's Tenth Justice." *Law & Social Inquiry*. 15: 305-320.
- Eskridge, William N., Jr., and John Ferejohn. 1992. "Making the Deal Stick: Enforcing the Original Constitutional Structure of Lawmaking in the Regulatory State." *Journal of Law, Economics, and Organization*. 8: 165-213.
- Johnson, Timothy. 2003. "The Supreme Court, the Solicitor General, and the Separation of Powers." *American Politics Research*. 31: 351-360.

### **Recommended Reading:**

- Caplan, Lincoln. 1988. *The Tenth Justice*. New York: Alfred A. Knopf.
- Ducat, Craig, and Robert Dudley. 1989. Federal District Judges and Presidential Power During the Postwar Era. *Journal of Politics* 51:98-118.
- Ferejohn, John A., and Barry R. Weingast. 1991. A Positive Theory of Statutory Interpretation. Working Paper in Political Science, Hoover Institution, Stanford University, 1991.
- Fiorina, Morris P. 1986. Legislator uncertainty, legislative control, and the delegation of legislative power. *Journal of Law, Economics, and Organization* 2:33-51.
- Gely, Rafael and Pablo Spiller. 1992. "The Political Economy of Supreme Court Constitutional Decisions: The Case of Roosevelt's Court Packing Plan." *International Review of Law and Economics*. 12:45-67.
- Gormley, William T. 1989. *Taming the Bureaucracy*. Princeton: Princeton University Press.
- Landes, William, and Richard Posner. 1975. The Independent Judiciary in an Interest-Group Perspective. *Journal of Law and Economics* 18:875-901.
- Macey, Jonathan R. 1992. Organizational Design and the Political Control of Administrative Agencies. *Journal of Law, Economics, and Organization* 8:93-125 (1992). See also comments by Shepsle and Levine.
- Melnick, R. Shep. 1983. *Regulation and the Courts: The Case of the Clean Air Act*. Washington: Brookings Institution.
- Moe, Terry M. 1987. An assessment of the positive theory of congressional dominance." *Legislative Studies Quarterly* 12:475-520.
- Moe, Terry M. 1987. Interests, institutions, and positive theory: the politics of the NLRB. *Studies In American Political Development* 2:236-299.
- Moe, Terry M. 1989. The politics of bureaucratic structure. In John E. Chubb and Paul E. Peterson (eds.), *Can the Government Govern?* Washington: The Brookings Institution. Pp. 267-330.
- Moe, Terry M. 1990. Political institutions: the neglected side of the story. *Journal of Law, Economics, and Organization* 6:213-261.
- Salokar, Rebecca. 1992. *The Solicitor General: The Politics of Law*. Philadelphia: Temple University Press.
- Schnapper, Eric. 1988. Becket at the Bar--The Conflicting Obligations of the Solicitor General. *Loyola of Los Angeles Law Review* 21:1187-1271.
- Segal, Jeffrey A. 1988. Amicus Curiae Briefs by the Solicitor General During the Warren and Burger Courts. *Western Political Quarterly* 41:135-144.
- Shapiro, Martin. 1968. *The Supreme Court and Administrative Agencies*. New York: Free Press.
- Shapiro, Martin. 1989. *Who Guards the Guardians? Judicial Control of Administration*. Athens: University of Georgia.
- Spriggs, James, II. 1997. Explaining Federal Bureaucratic Compliance with Supreme Court Opinions. *Political Research Quarterly* 50:567-594.
- Stewart, Richard. 1975. The reformation of American administrative law. *Harvard Law Review* 88:1667-1813 (selections).
- Sunstein, Cass. 1985. Interest groups in American public law. *Stanford Law Review* 38:29-87.
- Sunstein, Cass. 1986. Factions, self-interest and the APA: Four lessons since 1946. *Virginia Law Review* 72:271-296.

- Sunstein, Cass. 1991. *After the Rights Revolution: Reconceiving the Regulatory State*. Cambridge: Harvard University Press.
- Weingast, Barry, and Mark Moran. 1983. Bureaucratic discretion or congressional control: regulatory policymaking by the Federal Trade Commission. *Journal of Political Economy* 91:765-800.
- Weingast, Barry, and William Marshall. 1988. The industrial organization of Congress. *Journal of Political Economy* 96:132-163.
- Wilson, James Q. 1989. *Bureaucracy*. New York: Basic Books.

## **XII. INTER-INSTITUTIONAL RELATIONS PART III: COURT/ADMINISTRATIVE AGENCIES (NOVEMBER 14<sup>TH</sup>)**

### **Required Reading**

- Landes, William, and Richard Posner. 1975. "The Independent Judiciary in an Interest-Group Perspective." *Journal of Law and Economics*. 18: 875-901.
- Macey, Jonathan R. 1992. "Organizational Design and the Political Control of Administrative Agencies." *Journal of Law, Economics, and Organization*. 8: 93-125. See also comments by Shepsle and Levine.
- Spriggs, James, II. 1996. "The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact." *American Journal of Political Science*. 40: 1122-1151.
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- Eskridge, William N., Jr., and John Ferejohn. 1992. "Making the Deal Stick: Enforcing the Original Constitutional Structure of Lawmaking in the Regulatory State." *Journal of Law, Economics, and Organization*. 8: 165-213. See the comments by Knight, Rodriguez, and Strauss and Rutten.

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- Ferejohn, John A., and Barry R. Weingast. 1991. *A Positive Theory of Statutory Interpretation*. Working Paper in Political Science, Hoover Institution, Stanford University, 1991.
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- McCubbins, Mathew, Roger Noll, and Barry Weingast. 1989. Structure and process, politics, and policy: administrative arrangements and the political control of agencies. *Virginia Law Review* 75:431-482.
- Moe, Terry M. 1987. An assessment of the positive theory of "congressional dominance." *Legislative Studies Quarterly* 12:475-520.
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### **XIII. PUBLIC OPINION AND JUDICIAL IMPACT (NOVEMBER 28<sup>TH</sup>)**

#### **Required Reading**

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- Hoekstra, Valerie J., and Jeffrey A. Segal. 1996. "The Shepherding of Local Public Opinion: The Supreme Court and Lamb's Chapel." *Journal of Politics* 58:1079-1102.
- Lehne, Richard, and John Reynolds. 1978. *The Impact of Judicial Activism on Public Opinion*. *American Journal of Political Science* 22:896-904.
- Link, Michael M. 1995. "Tracking Public Mood in the Supreme Court: Cross-Time Analysis of Criminal Procedure and Civil Rights Cases." *Political Research Quarterly*. 48:61-78.
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#### **XIV. COMPARATIVE COURTS (DECEMBER 5<sup>TH</sup>)**

##### **Required Reading**

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- Tate, C. Neal, and Torbjorn Vallinder. 1995. *The Global Expansion of Judicial Power*. New York: New York University.
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- Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schulz. 1998. "The European Court of Justice, National Governments, and Legal Integration in the European Union." *International Organization*. 52: 149-176.
- Stone-Sweet, Alec, and Thomas L. Brunell. 1998. "Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community." *American Political Science Review*. 92: 63-82.

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- Brzezinski, Mark. 1998. *The Struggle for Constitutionalism in Poland*. London: Macmillan Press Ltd.
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- Gibson, James L., and Gregory A. Caldeira. 1996. The Legal Cultures of Europe. *Law & Society Review* 30:55-85.
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- Mattli, Walter, and Anne-Marie Slaughter. 1998. Revisiting the European Court of Justice. *International Organization* 52:177-210.
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- Shapiro, Martin M. 1992. The European Court of Justice. In Albert Sbragia (ed.) *Europolitics*. Washington: Brookings Institution.
- Stein, Eric. 1981. Lawyers, Judges, and the Making of a Transnational Constitution. *American Journal of International Law* 75:1-27.
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- Strasser, Sarah E. 1995/1996. Evolution and Effort: Docket Control & Preliminary References in the European Court of Justice. *Columbia Journal of European Law* 2:49-105.
- Vanberg, George. 1998. Abstract Judicial Review, Legislative Bargaining, and Policy Compromise. *Journal of Theoretical Politics* 10:299-326.
- Weiler, Joseph H. H. 1991. The Transformation of Europe. *Yale Law Journal* 100:2403-2483.
- Weiler, Joseph H. H. 1994. A Quiet Revolution: The European Court and Its Interlocutors. *Comparative Political Studies* 26:510-534.

### **IMPORTANT DATES**

**Research Paper Proposal:** September 19<sup>th</sup> (Week 5)

**Research Paper:** Friday, December 7<sup>th</sup>

**Graduate Research Poster Session:** December 10<sup>th</sup>, 8:00 – 10:00 a.m.

**CLASS WILL NOT MEET:** November 21<sup>st</sup> (Thanksgiving Break)