

# **Political Science 6311: Proseminar in Law & Courts**

## **Fall 2016; Monday 7-9:45; GR 3.606**

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Office Hours: Monday, 1-3.

Welcome to the Proseminar in Law and Courts. This course is intended as a Ph.D. level introduction to the Law & Courts literature. In this course we will focus on judges as the primary decision makers in many legal institutions as well as courts as institutions. We will review literature on courts primarily from the American context, although we will also spend some time reviewing the literature on comparative courts and on the use of law in international contexts.

### **Goals:**

1. Students will demonstrate the ability to critically analyze the political science literature on courts.
2. Students will demonstrate the ability to synthesize social scientific work on courts and apply it to novel situations and problems.

### **Readings:**

There is one required text:

Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. Washington D.C.: CQ Press. ISBN: 1568022263.

Other materials will be made available or are easily accessible over the Internet.

### **Evaluation:**

1. **Research Paper:** There are two options. Masters and Fast Track students will complete a bibliographic essay, with details posted on the course website. PhD students complete either a bibliographic essay or an original research design. If you are planning on writing a dissertation in the Law & Court field then you should treat this paper as the beginning exploration of a dissertation topic.

Requirements for the original research design are: (a) you must write a cogent literature review, (b) you must generate a testable hypothesis, and (c) you must identify data sources that might allow you to test the hypothesis. I can provide you with a guide to available datasets. The goal is to create a research design that can be used to conduct an original, empirical investigation. A good paper will include the following elements:

- a. A research question: why do we care about what you want to investigate? How will the paper contribute to academic or policy debates?
- b. A concise, well-tailored summary of the relevant literature.
- c. Testable hypothesis (or hypotheses) that arises from the literature review.
- d. Identification of relevant dependent variable and independent variables.
- e. A plan for operationalizing these variables and a brief discussion of potentially available data sources.
- f. Discussion of any anticipated problems.

The bibliographic essay/research design, for all students, is due on *Friday, December 9<sup>th</sup>*. A preliminary outline of your plan for the paper (both types) is due October 17<sup>th</sup> in class. We will discuss the outline as the due date approaches.

The research paper is worth 40% of your final grade in the course.

2. **Participation:** this course only works if you work. I expect that each of you will come to class prepared and having carefully read the assignments. Further, I expect that you will attend every session of the class and that you will participate actively in the discussions we have during class. Missing an excessive number of classes will result in a reduction in your grade.

In the first class session we will assign discussion leaders to the various weeks. In those weeks when you are a discussion leader you are expected to spend the first 15-20 minutes of class critically discussing the readings, raising questions for the class to answer, and attempting to draw inferences across the reading about the relevant subject matter. To help you think through the readings a list of typically important questions follows:

- a. What is the research question?
- b. Does the study address a broader theme in the literature? How does it fit with other papers we have read?
- c. What evidence is brought to bear to answer the question? Is it convincing? If not, how can it be improved?

Participation and leading discussion is worth 30% of your course grade.

3. **Weekly Summary:** Starting with the class on September 19<sup>th</sup>, at the beginning of each class students must submit one type-written summary for one paper (or the book in those weeks with assigned books) they choose from each week of the class (one-inch margin, double-spaced, 12-pt. font). The summary must explicitly state: (1) the article's primary research question; (2) the research and null hypotheses in the paper; (3) a brief discussion of how the research hypotheses are motivated (where do they come from); (4) how strong the evidence is in support or against the hypothesis/hypotheses. The summaries cannot be longer than one page nor deviate from the above formatting requirements. I will excuse one missed class assignments, but that is all. An example is posted on the course website.

THESE PAPERS ARE DUE AT BEGINNING OF THE CLASS PERIOD IN WHICH WE ARE SCHEDULED TO READ THE ARTICLE. THEY MUST BE TURNED IN IN-PERSON. I WILL NOT ACCEPT PAPERS THAT ARE EMAILED TO ME.

Grading for these assignments is as follows: √+ (excellent summary, including accurate statement of research question, hypothesis and motivation for research), √ (adequate summary, but some portion of the summary is incorrect or incomplete), and √- (the summary is inadequate; two or more sections are incorrect or incomplete).

The weekly papers are worth 30% of your course grade.

Grading Scale:

93+	A
89-92	A-
86-88	B+
83-85	B
80-83	B-
71-79	C
70 or below	F

### **Course Schedule:**

#### **Why Study Courts? (August 29<sup>th</sup>)**

1. Martin Shapiro. 1981. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press. Ch. 1.
2. Paul Milgrom, Douglass North, and Barry Weingast. 1990. "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs," *Economics and Politics* 2: 1-23.
3. Georg Vanberg. 2015. "Constitutional Courts in Comparative Assessment," *Annual Review of Political Science* 18: 167-85.

#### **No Class on September 5<sup>th</sup> (Labor Day)**

#### **How to Study Courts? (September 12<sup>th</sup>)**

1. Whittington, Keith E., R. Daniel Keleman, and Gregory A. Caldeira. 2008. "The Study of Law and Politics," in *The Oxford Handbook of Law and Politics* (eds. Whittington, Keleman and Caldeira). New York: Oxford Univ. Press.

2. Epstein, Lee, William Landes and Richard Posner. 2013. "A Realistic Theory of Judicial Behavior," in *The Behavior of Federal Judges*. Cambridge, MA: Harvard Univ. Press.
3. Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4:261-76.
4. Baum, Lawrence. 2010. "Motivation and Judicial Behavior: Expanding the Scope of Inquiry," in *The Psychology of Judicial Decision Making* (eds. David Klein and Gregory Mitchell). New York: Oxford.

### **Major Topics in Studying American Courts (Sept. 19<sup>th</sup> – Oct. 17<sup>th</sup>):**

#### Judicial Decision Making

##### *Attitudinal Approaches*

##### Theoretical Perspectives (September 19<sup>th</sup>)

1. Jeffrey Segal and Harold Spaeth. 2002. *Supreme Court & the Attitudinal Model Revisited*. Chapter 2 & pp. 86-97.
2. Howard Gillman. 2001. "What's Law Got to Do with It? Judicial Behavioralists Test the 'Legal Model' of Judicial Decision Making," *Law & Social Inquiry* 26: 465-504.
3. Eileen Braman and Thomas E. Nelson. 2007. "Mechanism of Motivated Reasoning? Analogical Perception in Discrimination Disputes," *American Journal of Political Science* 51: 940-956.
4. Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior," *Political Research Quarterly* 47: 749-768.

##### Evidence for the Influence of Preferences (September 26<sup>th</sup>)

1. Jeffrey A. Segal, Lee Epstein, Charles M. Cameron, and Harold J. Spaeth. 1995. "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited," *Journal of Politics* 57: 812-823.
2. Erin Kaheny, Susan Brodie Haire and Sara C. Benesh. 2008. "Change over Tenure: Voting, Variance, and Decision Making on the U.S. Courts of Appeals," *American Journal of Political Science* 52: 490-503.
3. Linda Keith, Jennifer Holmes and Banks Miller. 2013. "Explaining the Divergence in Asylum Grant Rates among Immigration Judges: An Attitudinal and Cognitive Approach," *Law & Policy* 35: 261-289.

4. Adam Glynn and Maya Sen. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science* 59: 37-54.

### *Strategic Approaches*

#### Theoretical Perspectives (October 3<sup>rd</sup>)

1. Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. Ch. 1.
2. Forrest Maltzman, James Spriggs II, & Paul Wahlbeck. 2000. *Crafting Law on the Supreme Court*. Ch. 1
3. Clifford Carruba, Matthew Gabel and Charles Hankla. 2008. "Judicial Behavior under Political Constraints: Evidence from the European Court of Justice," *American Political Science Review* 102: 435-52.

#### Evidence for Strategic Thinking (October 10<sup>th</sup>)

1. Bonneau, Chris, Thomas Hammond, Forrest Maltzman, and Paul Wahlbeck. 2007. "Agenda Control, the Median Justices, and the Majority Opinion on the U.S. Supreme Court," *American Journal of Political Science* 51: 890-905.
2. Lee Epstein and Jack Knight, *The Choices Justices Make*. Ch. 3, 4, pp. 138-157.
3. Virginia A. Hettinger, Stefanie A. Lindquist, and Wendy L. Martinek. 2004. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals," *American Journal of Political Science* 48: 123-137.
4. Deborah Beim and Jonathan Kstellec. 2014. "The Interplay of Ideological Diversity, Dissents, and Discretionary Review in the Judicial Hierarchy: Evidence from Death Penalty Cases," *Journal of Politics* 76: 1074-1088.

#### *Influence of Law on Decision Making* (October 17<sup>th</sup>)

1. Mark J. Richards and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making," *American Political Science Review* 96: 305-320.
2. Bartels, Brandon L. and Andrew J. O'Green. 2015. "The Nature of Legal Change on the U.S. Supreme Court: Jurisprudential Regimes Theory and Its Alternatives," *American Journal of Political Science* 59: 880-895.
3. Michael A. Bailey and Forrest Maltzman. 2008. "Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court," *American Political Science Review* 102: 369-384.

4. Donald R. Songer, Martha Humphries Ginn, and Tammy Sarver. 2003. "Do Judges Follow the Law When There is No Fear of Reversal?" *Justice System Journal* 24: 137-161.

### **Other Concerns with Courts (Oct. 24<sup>th</sup> & Oct. 31<sup>st</sup>)**

#### *Selecting Judges (October 24<sup>th</sup>)*

1. Huber, Gregory A., and Sanford C. Gordon. 2004. "Accountability and Coercion: Is Justice Blind when it Runs for Office?" *American Journal of Political Science* 48: 247-263.
2. Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform," *American Political Science Review* 95: 315-330.
3. Sen, Maya. 2014. "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates," *Journal of Law and Courts* 2: 33-65.
4. Scherer, Nancy. 2005. *Scoring Points: Politicians, Activists, and the Lower Federal Court Appointment Process*, pp. 11-46.

#### *Courts, Legitimacy, & Public Opinion (October 31<sup>st</sup>)*

1. Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court," *American Journal of Political Science* 55: 74-88..
2. Keith, Linda, Banks Miller and Rachel McGuire. 2015. "Second-Order Evaluations of the European Court of Human Rights," *Journal of Law & Courts* 3: 69-93.
3. Gibson, James L. 2009. "New-Style' Judicial Campaigns and the Legitimacy of State High Courts," *Journal of Politics* 71: 1285-1304.
4. Dino Christenson and David Glick. 2015. "Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy," *American Journal of Political Science* 59: 403-418.

### **International & Comparative Courts (Nov. 7<sup>th</sup> – Nov. 28<sup>th</sup>)**

#### *Judicial Independence (November 7<sup>th</sup>)*

1. Ramseyer, J. Mark. 1994. "The Puzzling (In)Dependence of Courts: A Comparative Approach." *Journal of Legal Studies* 23: 721-753.

2. Prillaman, William C. 2000. *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*. Ch. 1, 2 & 4.
3. Marcelo Leiras, Guadalupe Tunon, and Augustina Girandy. 2015. "Who Wants an Independent Court? Political Competition and Supreme Court Autonomy in the Argentine Provinces (1984-2008)," *Journal of Politics* 77: 175-187.
4. Melton, James and Tom Ginsburg. 2014. "Does De Jure Judicial Independence Really Matter? A Reevaluation of Explanations for Judicial Independence," *Journal of Law & Courts* 2: 187-217.

*Courts in Emerging Democracies & Autocratic Regimes* (November 14<sup>th</sup>)

1. Ginsburg, Thomas and Tamir Moustafa (eds.). 2008. *Rule by Law: The Politics of Courts in Authoritarian Regimes*. New York: Cambridge University Press, pp. 1-22 & Ch. 5 and 13.
2. Popova, Maria. 2010. "Political Competition as an Obstacle to Judicial Independence: Evidence from Russia and Ukraine," *Comparative Political Studies* 430: 1202-1229.
3. Vondoepp, Peter and Rachel Ellett. 2011. "Reworking Strategic Models of Executive-Judicial Relations: Insights from New African Democracies," *Comparative Politics* 42: 147-165.
4. Ghias, Shoaib A. 2010. "Miscarriage of Chief Justice: Judicial Power and the Legal Complex in Pakistan under Musharraf," *Law & Social Inquiry* 35: 985-1022.

**Note, there is no class on November 21<sup>st</sup> (Fall Break).**

*Constitutional Courts & International Courts* (November 28<sup>th</sup>)

1. Mitchell, Sara McLaughlin and Paul R. Hensel. 2007. "International Institutions and Compliance with Agreements," *American Journal of Political Science* 51 (4): 721-737.
2. Voeten, Erik. 2008. "The Impartiality of International Judges: Evidence from the European Court of Human Rights," *American Political Science Review* 102: 417-433.
3. Huth, Paul K., Sarah E. Croco, and Benjamin J. Appel. "Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts since 1945," *American Political Science Review* 105: 415-436.

4. Lupu, Yonatan and Erik Voeten. 2012. "Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights," *British Journal of Political Science* 42: 413-439.

**Additional UT DALLAS Policies may be found at:**  
<http://go.utdallas.edu/syllabus-policies>