

PSCI 6343: LAW AND THE POLICY PROCESS
SPRING 2014; WEDNESDAY 4:00-6:45; SLC 1.204 (1.202A)

Instructor: Dr. Banks Miller

Office Hours: GR 3.526 (Tuesday 2-3)

Contact Information: millerbp@utdallas.edu; 972-883-2930

Course Pre-requisites, Co-requisites, and/or Other Restrictions

No prior knowledge of the judicial process is assumed, but some background is helpful. If you are not familiar with the workings of the courts, it may be helpful to read parts of a basic book on the judicial process. Some possibilities include: Baum, *American Courts*; Carp and Stidham, *The Judicial Process in America*; Glick, *Courts, Politics and Justice*; or Murphy, Pritchett and Epstein, *Courts, Judges and Politics*.

Course Description

This course examines the stages of the judicial processes that precede and follow decision making: litigation, the substance of judicial policies and the responses to those policies. It also considers lawyers as participants in the judicial process and the process of selecting and confirming judges. The focus is on American courts, although we will also discuss courts in other countries throughout the semester.

Student Learning Objectives/Outcomes

1. Students should be able to critically assess the academic literature in the various fields discussed over the semester.
 2. Students should be capable of formulating concise and accurate summaries of the literature, including the ability to understand the application of theory to data.
 3. Students will be able to locate readings related to work assigned in class.
-

Required Textbooks and Materials

Readings in this class are primarily taken from journal articles. In addition, three books are required. The first is Charles Epp's *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective*. We will take up this book in week 6 of the semester. The, we will read Howard and Steigerwalt's *Judging Law and Policy* in week 8 (right after Spring Break). The other required book is Gerald Rosenberg's *The Hollow Hope: Can Courts Bring About Social Change (2nd ed.)*? We will take up this book in class 13 of the semester. Please order these books from Amazon or another source so that you will receive them in sufficient time to have read them for class. I have reserved

copies of the Epp book at the campus bookstore, but you will need to order the other two books online in time to have them read. Journal articles that are not available online through JSTOR or another source will be made available.

Assignments & Academic Calendar

January 15th: Class Introduction

1. Lawyers (January 22nd)

1. Benjamin Barton. 2010. "The Lawyer-Judge Hypothesis," in *The Pursuit of Justice: Law and Economics of Legal Institutions* (ed. Edward J. Lopez). New York: Palgrave MacMillan.
2. Robert Posner. 1995. "The Material Basis of Jurisprudence," *Indiana Law Journal* 69: 2-37.
3. Andrea McAtee and Kevin T. McGuire. 2007. "Lawyers, Justices, and Issue Salience: When and How do Legal Arguments Affect the Supreme Court?" *Law & Society Review* 41: 259-278.

2. State Court Judicial Selection (January 29th)

1. Melinda Gann Hall. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform," *American Political Science Review* 95: 315-330.
2. Lawrence Baum. 2003. "Judicial Elections and Judicial Independence: The Voter's Perspective," *Ohio State Law Journal* 64: 13-41.
3. Alexander Tabarrok and Eric Helland. 1999. "Court Politics: The Political Economy of Tort Awards," *Journal of Law and Economics* 42: 157-188.
4. Melinda Gann Hall and Chris W. Bonneau. 2008. "Mobilizing Interest: The Effect of Money on Citizen Participation in State Supreme Court Elections," *American Journal of Political Science* 52: 457-470.

3. Federal Court Judicial Selection (February 5th)

1. Lee Epstein, Rene Lindstadt, Jeffrey Segal, and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees," *Journal of Politics* 68: 296-307.

2. Katellec, Jonathan P, Jeffrey R. Lax and Justin H. Phillips. 2010. "Public Opinion and Senate Confirmation of Supreme Court Nominees," *Journal of Politics* 72: 767-784.
3. Wendy Martinek, Mark Kemper and Steven Van Winkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998," *Journal of Politics* 64: 337-361.
4. Elisha Savchak, Thomas Hansford, Donald Songer, Robert Carp, Kenneth Manning. 2006. "Taking it to the Next Level: The Elevation of District Court Judges to the Federal Courts of Appeal," *American Journal of Political Science* 50: 478-493.

B. Litigation

4. Decisions to Litigate (February 12th)

1. Sean Farhang. 2009. "Congressional Mobilization of Private Litigants: Evidence from the Civil Rights Act of 1991," *Journal of Empirical Legal Studies* 6: 1-34.
2. Frank A. Sloan and Chee Ruey Hsieh. 1995. "Injury, Liability, and the Decision to File a Medical Malpractice Claim," *Law and Society Review* 29: 413-435.
3. George L. Priest and Benjamin Klein. 1984. "The Selection of Disputes for Litigation," *Journal of Legal Studies* 13: 1-55.
4. Donald Songer, Charles Cameron and Jeffrey Segal. 1995. "An Empirical Test of the Rational Actor Theory of Litigation," *Journal of Politics* 57: 1119-1129.

5. Theories of Interest Group Litigation (February 19th)

1. Susan M. Olson. 1990. "Interest Group Litigation in Federal District Court: Beyond the Political Disadvantage Theory," *Journal of Politics* 52: 854-882.
2. Gregory A. Caldeira and John R. Wright. 1990. "Amici Curiae Before the Supreme Court: Who Participates, When and How Much?" *Journal of Politics* 52: 782-806.

3. Thomas G. Hansford. 2004. "Information Provision, Organizational Constraints, and the Decision to Submit an Amicus Curiae Brief in a U.S. Supreme Court Case," *Political Research Quarterly* 57: 219-230.

6. Interest Group Litigation and Rights (February 26th)

1. Charles Epp. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*.
2. Urribarri, Raul A. Sanchez, Susanne Schorpp, Kirk A. Randazzo, and Donald Songer. 2011. "Explaining Changes to Rights Litigation: Testing a Multivariate Model in a Comparative Framework," *Journal of Politics* 73: 391-405.

C. Policy Outputs

7. Outcomes of Litigation/Winners and Losers (March 5th)

1. Marc Galanter. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9: 95-160.
2. Charles Epp. 1999. "The Two Motifs of 'Why the Haves Come Out Ahead' and Its Heirs." *Law & Society Review* 33: 1089-1098.
3. Donald R. Songer, Reginald S. Sheehan, and Susan Brodie Haire. 1999. "Do the 'Haves' Come Out Ahead Over Time? Applying Galanter's Framework to Decision of the U.S. Courts of Appeals, 1925-1988," *Law & Society Review* 33: 811-832.
4. Robert A. Dahl. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy Maker," *Journal of Public Law* 6: 279-95.

No class March 12th—Spring Break

8. Policy and American Courts (March 19th)

1. Robert Howard and Amy Steigerwalt. 2012. *Judging Law and Policy: Courts and Policymaking in the American Political System*. New York: Routledge.

D. Responses to Court Policies

9. Lower Courts (March 26th)

1. Donald Songer, Jeffrey Segal and Charles Cameron. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions," *American Journal of Political Science* 38: 673-696.
2. Chad Westerland, Jeffrey Segal, Lee Epstein, Charles Cameron, and Scott Comarato. 2010. "Strategic Defiance and Compliance in the U.S. Courts of Appeals," *American Journal of Political Science* 54: 891-905.
3. Francine Sanders. 1995. "Brown v. Board of Education: An Empirical Reexamination of Its Effects on Federal District Courts," *Law and Society Review* 29: 731-756.

No Class April 2nd

10. Administrative Agencies (April 9th)

1. James F. Spriggs, 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.
2. F. Andrew Hanssen. 2000. "Independent Courts and Administrative Agencies: An Empirical Analysis of the States," *Journal of Law and Economics* 16: 534-571.
3. Humphries, Martha A. and Donald R. Songer. 1999. "Law and Politics in Judicial Oversight of Federal Administrative Agencies," *Journal of Politics* 61: 207-220.
4. Canes-Wrone, Brandice. 2003. "Bureaucratic Decisions and the Composition of the Lower Courts," *American Journal of Political Science* 47: 205-214.

11. Public Opinion & the Courts (April 16th)—Need to change this to reflect SC effect on PO, not other way around; maybe Hoekstra's book is a start

1. Huber, Gregory and Sanford Gordon. 2004. "Accountability and Coercion: Is Justice Blind when it Runs for Office?" *American Journal of Political Science* 48: 247-263.
2. Casillas, Christopher J., Patrick K. Enns and Patrick C. Wolfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court," *American Journal of Political Science* 55: 74-88.
3. Hurwitz, Jon and Mark Peffley. 2005. "Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System," *Journal of Politics* 67: 762-783.

12. American Political Development and Legal Change (April 23rd)

1. Paul Frymer. 2008. "Law and American Political Development," *Law and Social Inquiry* 33: 779-803.
2. Gillman, Howard. 2002. "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891," *American Political Science Review* 96: 511-24.
3. Paul Frymer. 2003. "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935-85," *American Political Science Review* 97: 483-99.

13. Societal Impact (April 30th)

1. Gerald Rosenberg. 2002. *The Hollow Hope: Can Courts Bring About Social Change* (2nd edition).
2. McCann, Michael. 1999. "How the Supreme Court Matters in American Politics: New-Institutionalist Perspectives," in *The Supreme Court in American Politics: New Institutional Interpretations* (ed. Howard Gillman and Cornell Clayton), pp. 63-97. Lawrence: Univ. of Kansas Press.

Grading Policy

1. Attendance and Participation: regular attendance and thorough preparation are mandatory in this graduate-level seminar. I will excuse one missed class session. Any additional absences will result in a decrease in your final grade.

In addition, each student will be responsible for facilitating class discussion by bringing several questions to class to stimulate discussion. You are responsible for posting to the course website in eLearning (under the Discussion tab) a set of questions that will constitute how you plan to frame the readings no later than 3 p.m. on Wednesdays before class. Class participation and the quality of your questions will account for 25% of your grade in the course—take it seriously.

2. Short Reaction Papers: 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. The grades on these papers constitute 40% of your grade. I will excuse two 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: $\sqrt{+}$ (excellent summary, including accurate statement of research question, hypothesis and motivation for research), $\sqrt{}$ (adequate summary, but some portion of the summary is incorrect or incomplete), and $\sqrt{-}$ (the summary is inadequate; two or more sections are incorrect or incomplete).

3. Bibliographic Essay: By **May 9th** you will complete a bibliographic essay of 14-18 pages (double-spaced, 12-point font). I have posted a guide to the bibliographic essay on the course website and we will discuss this assignment in greater detail in class. In essence, this essay is a synthesis of the literature in a focused area of research. The objective is to compare and contrast various approaches to the topic you have chosen and to critically assess the readings. These types of essays frequently take on a “this is what we know, this is what we need to learn” type of dynamic. The wrong way to approach this assignment is to pick a few seemingly related articles and summarize them. The correct approach is to integrate your reading of the literature into a cohesive narrative that reflects knowledge of previous research but is simultaneously aware of its strengths and weaknesses. Your essay must contain a clearly stated thesis. In essence, your thesis is a statement that summarizes your vision of the themes, issues and problems of the research you are integrating. Multiple examples of this type of essay are available in the *Annual Review of Political Science*. You should know your topic, thesis and a few of the foundational readings by Spring Break. You will turn in a 1-2 page outline of your topic on **March 19th**. The bibliographic essay is worth 35% of your grade.

4. The grading scale for this class is as follows:

90-100%	A
80-89%	B
70-79%	C
Below 70%	F

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