

Political Science 716
Fall 2005
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Office hours: Wed 10:30 - 11:50, 1:30 - 5:30 and by appointment

JUDICIAL DECISION MAKING

In the study of judicial politics, the issue of greatest interest has been how to explain judicial decisions. This course is concerned with that issue. We will consider a range of theoretical arguments and empirical evidence, all concerned with the possible determinants of judges' choices as decision makers. Inevitably, much of the scholarship on judicial behavior is narrow in its focus. But all that scholarship relates to the broad issue of explanation that is our concern. One of our tasks throughout the course will be to make the connection between specific inquiries and that broad issue.

For complex historical reasons, for a long time the field of judicial politics was largely isolated from the mainstream of scholarship in American politics. That isolation is breaking down, so there are closer links between the study of judicial behavior and the study of decision making in the other branches of government. Especially for those students whose primary interests concern the other branches, one goal should be to think systematically about similarities and differences in decision making across branches. To the extent that the determinants of behavior for Supreme Court justices differ from those for members of Congress, for example, what characteristics of the two organizations explain those differences?

Readings for the course will come from the usual variety of sources. The readings are listed below by topic and class day. There might be a few additions and deletions as we go along.

Among the readings are substantial portions of three books, which have been ordered by SBX. In the schedule of readings, these books will be designated by the names of their authors.

Jeffrey A. Segal and Harold J. Spaeth, The Supreme Court and the Attitudinal Model Revisited (2002)

Lee Epstein and Jack Knight, The Choices Justices Make (1998)

Forrest Maltzman, James F. Spriggs II, and Paul J. Wahlbeck, Crafting Law on the Supreme Court: The Collegial Game (2000)

On the syllabus, the names of several journals are abbreviated, as follows: AJPS (American Journal of Political Science), APSR (American Political Science Review), JOP (Journal of Politics), and PRQ (Political Research Quarterly).

Most of the articles to be read are available at one or more websites. Others will be in a file in the department's reading room, 2174 Derby. On the syllabus I will designate where to find them: JSTOR, HEIN, OSCAR, or READING. JSTOR (www.jstor.org/jstor/) is the website with social science journal articles that are more than three years old. HEIN

(heinonline.org/front/front-index) is a website with law review articles in their printed format. (To retrieve articles from the Hein website, you need to enable cookies.) OSCAR (library.ohio-state.edu/) is the OSU library circulation system, which has some additional journals online (go to library.ohio-state.edu and then to “journals (online)”). READING is the department reading room.

Students who have limited familiarity with the judicial process may find it useful to consult a textbook on the courts generally, on the federal courts, or specifically on the Supreme Court. I can let you know about books that would be helpful in light of your current knowledge about the courts.

Student responsibilities for the class are as follows:

1. Class participation (20% of grade). Students should participate regularly in class discussions, and your participation should reflect careful thinking about the readings and the issues raised in them.

2. Short reaction papers (40% of grade). For one class session each week, each student will write an informal reaction paper of approximately two double-spaced pages. These papers could be a critique of a particular reading or set of readings, an analysis of a specific or general question raised by the readings, or in some other form that you find appropriate. These papers will be due at the beginning of the class session. We’ll devise a system to divide up each week so that about half the class members write a reaction paper for each session.

3. Final papers (40% of grade). Students will write a paper of approximately fifteen to twenty double-spaced pages, due at the last class session (December 1st). The preferred type of paper is a design for a research project on judicial decision making. The paper should put the project in the context of the relevant scholarship, provide a theoretical framework for the research, and outline the methodology of the research itself. You should think of the design as the first stage of a paper for your general examination, a paper that you would submit for publication, or both.

Alternatively, the paper might analyze a broad issue in the study of judicial decision making. To take some examples, the paper might be a critique of a particular theory or approach to explanation in the scholarship on decision making; an argument for a particular line of research to address a major theoretical issue in the field; a comparison of decision making between two different types of courts; or a comparison of judicial decision making with decision making in another branch.

Once you’ve formulated a tentative idea for the paper, write me a short memo describing what you have in mind. I’ll then talk with you about the paper, and I’ll ask you to write another short memo with a semifinal plan for the paper. It will be best to get all this done by the sixth week of the quarter.

Schedule of Topics and Readings

I. Introduction to Judicial Decision Making (September 22)

No readings.

II. The Impact of Judges' Policy Preferences

A. The argument for the dominance of preferences (September 27)

Segal and Spaeth, ch. 2 and pp. 86-97.

Epstein and Knight, ch. 2.

B. Evidence on the influence of preferences

1. The Supreme Court (September 29)

Glendon Schubert, "The 1960 Term of the Supreme Court: A Psychological Analysis," APSR 56 (March 1962), 90-107. (JSTOR)

David Danelski, "Values as Variables in Judicial Decision-Making," Vanderbilt Law Review 19 (1966), 721-740. (HEIN)

Segal and Spaeth, pp. 312-326.

Jeffrey A. Segal and Albert Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices," APSR 83 (June 1989), 557-565. (JSTOR)

Jeffrey A. Segal, Lee Epstein, Charles M. Cameron, and Harold J. Spaeth, "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited," JOP 57 (August 1995), 812-823. (JSTOR)

2. Lower courts (October 4)

James L. Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," APSR 72 (September 1978), 911-924. (JSTOR)

John T. Wold and Gregory A. Caldeira, "Perceptions of 'Routine' Decision-Making in Five California Courts of Appeals," Polity 13 (Winter 1980), 334-347. (READING)

Craig F. Emmert and Carol Ann Traut, "The California Supreme Court and the Death Penalty," American Politics Quarterly 22 (January 1994), 41-61. (OSCAR)

Paul Brace, Laura Langer, and Melinda Gann Hall, "Measuring the Preferences of State Supreme Court Judges," JOP 62 (May 2000), 387-413. (JSTOR)

C. Sources of policy preferences (October 6)

C. Neal Tate, "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978," APSR 75 (June 1981), 355-367. (JSTOR)

Donald R. Songer, Sue Davis, and Susan Haire, "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals." Journal of Politics 56 (May 1994), 425-439. (JSTOR)

Donald R. Songer and Susan J. Tabrizi, "The Religious Right in Court: The Decision Making of Christian Evangelicals in State Supreme Courts," JOP 61 (May 1999), 507-526. (JSTOR)

Nancy Scherer, "Blacks on the Bench," Political Science Quarterly 119 (Winter 2004-05), 655-675. (OSCAR)

III. The Impact of Law

A. The argument for the importance of law (October 11)

Saul Brenner and Marc Stier, "Does Stare Decisis Influence the Justices' Voting on the Supreme Court?" Paper presented at the 1995 meeting of the American Political Science Association, pp. 1-13. (READING)

C. K. Rowland and Robert A. Carp, Politics and Judgment in Federal District Courts (1996), ch. 6. (READING)

B. Evidence on the influence of law

1. The Supreme Court (October 13)

Mark J. Richards and Herbert M. Kritzer, "Judicial Regimes in Supreme Court Decision Making," APSR 96 (June 2002), 305-320. (JSTOR)

Robert M. Howard and Jeffrey A. Segal, "An Original Look at Originalism." Law and Society Review 36 (2002), 113-134. (READING)

Segal and Spaeth, pp. 287-310.

Donald R. Songer and Stefanie A. Lindquist, "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making," AJPS 40 (November 1996), 1049-1063. (JSTOR)

2. Lower courts (October 18)

David E. Klein, Making Law in the United States Courts of Appeals (2002), ch. 4.
(READING)

Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron, "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions," AJPS 38 (August 1994), 673-96. (JSTOR)

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

C. Theoretical perspectives on law versus policy (October 20)

Ziva Kunda, "The Case for Motivated Reasoning," Psychological Bulletin 108 (1990), 480-498. (READING)

Dan Simon, "Freedom and Constraint in Adjudication: A Look Through the Lens of Cognitive Psychology," Brooklyn Law Review 67 (2002), 1097-1139. (HEIN)

IV. Group Decision Making

A. The character of appellate courts as groups (October 25)

Jonathan Matthew Cohen, Inside Appellate Courts, ch. 5 (2002). (READING)

Paul Brace and Melinda Gann Hall, "Integrated Models of Judicial Dissent," JOP 55 (November 1993), 914-935. (JSTOR)

J. Woodford Howard, "On the Fluidity of Judicial Choice," APSR 62 (March 1968), 43-56. (JSTOR)

Robert H. Dorff and Saul Brenner, "Conformity Voting on the United States Supreme Court," JOP 54 (August 1992), 762-775. (JSTOR)

B. Strategy: theoretical perspectives (October 27)

Epstein and Knight, chs. 1, 3-4.

Maltzman, Spriggs, and Wahlbeck, ch. 1.

C. Strategy: empirical evidence (November 1)

Maltzman, Spriggs, and Wahlbeck, chs. 2-6.

Virginia A. Hettinger, Stefanie A. Lindquist, and Wendy L. Martinek, "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals," AJPS 48 (January 2004), 123-137. (OSCAR)

Theodore S. Arrington and Saul Brenner, "Strategic Voting for Damage Control on the Supreme Court," PRQ 57 (December 2004), 565-573. (READING)

V. Courts and Their Environments

A. The other branches of government

1. Avoiding overrides of decisions (November 3)

Bergara, Mario, Barak Richman, and Pablo T. Spiller, "Modeling Supreme Court Strategic Decision Making: The Congressional Constraint." Legislative Studies Quarterly 28 (2003), 47-80. (READING)

Segal and Spaeth, pp. 327-356.

Brian R. Sala and James F. Spriggs, II, "Designing Tests of the Supreme Court and the Separation of Powers," PRQ 57 (June 2004), 197-208. (READING)

Laura Langer, "Strategic Considerations and Judicial Review: The Case of Workers' Compensation Laws in the American States," Public Choice 116 (2003), 55-78. (OSCAR)

2. Other mechanisms of influence (November 8)

Epstein and Knight, pp. 138-157.

Walter M. Murphy, Elements of Judicial Strategy (1964), ch. 6. (READING)

Daniel Klerman, "Nonpromotion and Judicial Independence," Southern California Law Review 72 (1999), 455-463. (HEIN)

Timothy R. Johnson, "The Supreme Court, the Solicitor General, and the Separation of Powers," American Politics Research 31 (July 2003), 426-451. (OSCAR)

B. Mass public opinion

1. The Supreme Court (November 10)

William Mishler and Reginald S. Sheehan, "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions," APSR 87 (March 1993), 87-101. (JSTOR)

Helmut Norpoth and Jeffrey A. Segal; William Mishler and Reginald S. Sheehan, "Popular Influence on Supreme Court Decisions," APSR 88 (September 1994), 711-724. (JSTOR)

Kevin T. McGuire and James A. Stimson, "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." JOP 66 (November 2004), 1018-1035. (OSCAR)

Epstein and Knight, pp. 157-177.

2. Elected judges (November 15)

James Kuklinski and John Stanga, "Political Participation and Governmental Responsiveness: The Behavior of California Superior Courts," APSR 73 (December 1979), 1090-1099. (JSTOR)

Melinda Gann Hall, "Electoral Politics and Strategic Voting in State Supreme Courts," JOP 54 (May 1992), 427-446. (JSTOR)

Gregory A. Huber and Sanford C. Gordon, "Accountability and Coercion: Is Justice Blind When It Runs for Office?" AJPS 48 (April 2004), 247-263. (OSCAR)

C. Judges' social environments (November 17)

David P. Bryden, "Is the Rehnquist Court Conservative?" The Public Interest 109 (Fall 1992), 73-88. (OSCAR)

Frederick Schauer, "Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior," University of Cincinnati Law Review 68 (2000), 615-636. (HEIN)

VI. Two Special Contexts

A. Case selection (November 22)

Segal and Spaeth, pp. 244-78.

H. W. Perry, Jr., Deciding to Decide: Agenda Setting in the United States Supreme Court (1991), ch. 9. (READING)

Gregory A. Caldeira, John R. Wright, and Christopher J. W. Zorn, "Sophisticated Voting and Gate-Keeping on the Supreme Court," Journal of Law, Economics, and Organization 15 (1999), 549-577. (READING)

Charles M. Cameron, Jeffrey A. Segal, and Donald Songer, "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," APSR 94 (March 2000), 101-116. (JSTOR)

B. Change in individual behavior and collective policy (November 29)

Jeffrey A. Segal, "Measuring Change in the Supreme Court: Examining Alternative Models," AJPS 29 (August 1985), 461-479. (JSTOR)

Lee Epstein, Valerie Hoekstra, Jeffrey A. Segal, and Harold J. Spaeth, "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices," JOP 60 (August 1998), 801-818. (JSTOR)

Charles R. Shipan, "Acclimation Effects Revisited," Jurimetrics 40 (Winter 2000), 243-256. (READING)

VII. Thinking About Judicial Behavior (December 1)

No readings.