

Political Science 404

Judicial Process

Spring 2003

Course Syllabus

Instructor: Professor Lynda Dodd
Office: 463 Smith Hall
Office Hours: Mon. & Wed. 12-2
and by appointment

Class Location: SMI 218

Course Description

The aim of this course is to provide an introduction to the political science literature in the field of judicial politics. Particular emphasis will be placed on the Supreme Court. My primary goal is to present an overview of the *empirical* literature concerning judicial process and behavior and, in so doing, review a selection of the most informative¹ debates (both past and present) attracting the attention of political scientists who study the Supreme Court.

Course Materials

Most of the readings for this course will come from political science journals and law reviews. The majority of these articles can be downloaded from the www.jstor.org or Lexis/Academic-Universe websites. (Please note: You must be connected the campus network in order to access JSTOR or Lexis.)

The remaining required articles and book excerpts will be available in a course packet at Copy Maven.

¹ Because the focus of this course is primarily to learn about how the Supreme Court operates, I have chosen to highlight political science scholarship that contributes to our empirical knowledge about the Court. This course will not emphasize other important theoretical or methodological debates in political science scholarship on the Court, including: (1) critiques of the assumptions underlying the "Attitudinal Model," or (2.) debates concerning the role of legal precedents in lower court judges' decision-making.

I have also included a number of *suggested* readings on the syllabus. These are not required for our class discussions, but you may find them useful in preparing your response essays.

You are expected to purchase the following texts for this course:

1. David M. O'Brien, *Storm Center* 6th ed. (2000)
2. Lee Epstein and Jack Knight, *The Choices Justices Make* (1998)
3. Edward Lazarus, *Closed Chambers* (1998)
4. Bradley C. Canon and Charles A. Johnson, *Judicial Policies: Implementation and Impact* 2nd ed. (1999)
5. Terri Jennings Peretti, *In Defense of a Political Court* (1999)

Organization of the Course

35% Discussion Groups and Memos

The course will consist of seminar-style discussions of the reading. The class will be divided into groups of 10. For each class session, one group (1/4 of the class) will be responsible for leading the discussion. The group responsible for that day's discussion must turn in to me via email a "discussion memo," which is a critical review of the reading along with some potential topics for discussion, by 5pm the day before that particular class meets.

30% Midterm

35% Final Exam

Course Readings

I. Introduction to the Course

A. Nuts and Bolts: The Federal Court System

<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/FederalCourtsInAmericanGovernment.aspx>

B. The Political Science Perspective

Gerald Rosenberg, "Across the Great Divide (Between Law and Political Science)," 3 GREEN BAG 2d 267 (2000).

II. Who?: The Supreme Court Justices

A. The Politics of Supreme Court Nominations

David M. O'Brien, *Storm Center*, Ch.2 - "The Cult of the Robe"

Kevin McGuire, "A Tale of Two Nominees: Robert Bork and Clarence Thomas," Ch. 2 in *Understanding the Supreme Court* (2002)

Suggested Readings

Charles M. Cameron, Albert D. Cover, and Jeffrey A. Segal, "Senate Voting on Supreme Court Nominees: A Neo-Institutional Model," 84 AM. POL. SCI. REV. 525 (1990)

Thomas Marshall, "Symbolic versus Policy Representation on the U.S. Supreme Court," 55 J. POL. 793 (1993)

P.S. Ruckman, "The Supreme Court, Critical Nominations, and the Senate Confirmation Process," 55 J. of Pol. 793-805 (1993)

Timothy M. Hagle, "Strategic Retirements: A Political Model of Turnover on the United States Supreme Court," 15 POL. BEHAVIOR 25 (1993)

Frank Guliuzza III, Daniel J. Reagan, and David M. Barrett, "The Senate Judiciary Committee and Supreme Court Nominees: Measuring the Dynamics of Confirmation Criteria," 56 J. POL. 773 (1994)

Gregory A. Caldeira and John R. Wright, "Lobbying for Justice: Organized Interests, Supreme Court Nominations, and the United States Senate," 42 AM. J. POL. SCI. 499 (1998)

Ayo Ogundele and Linda Camp Keith, "Research Note: Reexamining the Impact of the Bork Nomination," 52 POL. RES. Q. 403 (1999)

Bryon J. Moraski and Charles R. Shipan, "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices," 43 AM. J. OF POL. SCI. 1069 (1999)

Jeffrey A. Segal, "Buyer Beware? Presidential Success Through Supreme Court Appointments," 53 POL. RES. Q. 557 (2000)

B. Who are our Justices?

Chief Justice William Rehnquist

"The Partisan: A Talk with Justice Rehnquist," N.Y. Times Magazine (March 3, 1985)

David G. Savage, "Opinions on Rehnquist: Views on the Chief Justice's Impact are Still Mixed," ABA Journal (October 1996)

David J. Garrow, "The Rehnquist Reins," N.Y. Times Magazine (October 6, 1996)

Justice John Paul Stevens

Stuart Taylor, Jr, "The Last Moderate," American Lawyer (June 1990)

Justice Sandra Day O'Connor

"Holding the Center: Sandra Day O'Connor Evolves into Major Force on Supreme Court," ABA Journal (March 1993)

Erwin Chemerinsky, "The O'Connor Court," Cal. Lawyer (March 2001)

Justice Antonin Scalia

Jeffrey Rosen, "The Leader of the Opposition," The New Republic (January 18, 1993)

Tony Mauro, "Could Scalia be the Chief?" Legal Times (November 18, 2002)

Justice Anthony Kennedy

Jeffrey Rosen, "The Agonizer," The New Yorker (November 11, 1996)

Tony Mauro, "Kennedy on the Campaign Trail?" Legal Times (April 1, 2002)

Justice David Souter

Jeffrey Rosen, "Poetic Justice: The Education of David Souter," The New Republic (March 8, 1993)

David J. Garrow, "Justice Souter Emerges," N.Y. Times Magazine (September 25, 1994)

Justice Clarence Thomas

Tony Mauro, "Redefining Thomas," Tony Mauro. Legal Times (August 6, 2001)

Garland Watt, "Reflecting on Clarence Thomas, A Decade On," Chicago Daily Law Bulletin (April 27, 2002)

Justice Ruth Bader Ginsberg

Erwin Chemerinsky, "The Crowded Center," ABA Journal (Oct. 1994)

Jeffrey Rosen, "The New Look of Liberalism on the Court," N.Y. Times Magazine (October 5, 1997)

Tony Mauro, "Moderate in the Extreme; far from being liberal trailblazers, Ruth Bader Ginsburg and Stephen Breyer have taken cautious steps on the high court," Legal Times (March 6, 2000)

Justice Stephen Breyer

Jeffrey Rosen, "Breyer Restraint: Is Clinton's Court Pick Too Good to Be True?" The New Republic (July 11, 1994)

III. What?: The Politics of Certiorari

A. Process

David M. O'Brien, *Storm Center*, Ch. 4 - "Deciding What to Decide"

B. Strategy

Lee Epstein, Jeffrey A. Segal, and Jennifer Nicoll Victor, "Dynamic Agenda Setting on the U.S. Supreme Court: An Empirical Assessment," 39 HARV. J. LEG. 395 (2002)

C. Interest Group Involvement and "Cue Theory"

Suggested Readings:

Stuart H. Teger; Douglas Kosinski, "The Cue Theory of Supreme Court Certiorari Jurisdiction: A Reconsideration," 42 J. POL. 834 (1980)

S. Sidney Ulmer, "The Supreme Court's Certiorari Decisions: Conflict as a Predictive Variable." 78 AM. POL. SCI. REV. 901 (1984)

Gregory Caldeira and Jack Wright, "Interest Groups and Agenda Setting in the Supreme Court of the U.S." 82 AM. POL. SCI. REV. 1109 (1988)

Saul Brenner and John Krol, "Strategies in Certiorari Voting on the United States Supreme Court," 51 J. POL. 828 (1989)

John F. Krol and Saul Brenner, "Strategies in Certiorari Voting on the United States Supreme Court." 43 W. POL. Q. 35 (1990)

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

Robert L. Boucher, Jr., and Jeffrey A. Segal, "Supreme Court Justices as Strategic Decision-Makers: Aggressive Grants and Defensive Denials on the Vinson Court," 57 J. of Pol. 812-823 (1995)

Kevin McGuire and Gregory Caldeira, "Lawyers, Organized Interests, and the Law of Obscenity: Agenda Setting in the Supreme Court," 87 Am. Pol. Sci. Rev. 717-726 (1993)

Kevin T. McGuire, "Lawyers and the U.S. Supreme Court: The Washington Community and Legal Elites," 37 Am. J. Pol. Sci. 365-390 (1993)

IV. How?: Supreme Court Decision Making

A. Rules, Procedures & Goals

David M. O'Brien, *Storm Center*, Ch. 3 - "Life in the Marble Temple," and Ch. 5 - "Deciding Cases and Writing Opinions"

Lawrence Baum, "What Judges Want: Judges' Goals and Judicial Behavior," 47 POL. RES. Q. 749 (1994)

B. The Attitudinal Model

Harold J. Spaeth, "The Attitudinal Model," Ch. 12 in *Contemplating Courts* (Lee Epstein ed., 1995)

Suggested Reading

Frank B. Cross, "Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance," 92 Nw. U.L. Rev. 251 (1997)

C. An Insider's Perspective

Virtual Tour of the Supreme Court Building (needs Quick-Time plug-in)

Edward Lazarus, *Closed Chambers* (1998) pp. 17-73, 221-87, 329-486, 513-18

Suggested Reading

Special Issue on *Closed Chambers* (JURIST Books-on-Law, May 1998)

- o [interview with Edward Lazarus](#)
- o commentaries by [Peter Irons](#), [David Kairys](#), [Tony Mauro](#), [David O'Brien](#), [Richard Painter](#), and [Mark Tushnet](#)

Alex Kozinski, "Conduct Unbecoming (A Review of *Closed Chambers*)," 108 YALE L.J. 835 (1999)

Edward Chemerinsky, "Opening *Closed Chambers*," 108 YALE L.J. 1087 (1999)

Sally J. Kenny, "Puppeteers or Agents? What Lazarus's *Closed Chambers* Adds to Our Understanding of Law Clerks at the U.S. Supreme Court." 25 LAW & SOC. INQ. 185 (2000)

D. The Strategic Model

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

Suggested Reading

Walter F. Murphy, *Elements of Judicial Strategy* (1964)

Forrest Maltzman and Paul J. Wahlbeck, "Strategic Policy Considerations and Voting Fluidity on the Burger Court." 90 AM. POL. SCI. REV. 581 (1990)

Paul J. Wahlbeck, James F. Spriggs II, and Forrest Maltzman, "Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court." 42 AM. J. POL. SCI. 294 (1998)

Lee Epstein and Jack Knight, "Field Essay: Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead," 53 POL. RES. Q. 625 (2000)

E. New Institutionalism

Howard Gillman, "The Court as an Idea, Not a Building (or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision-Making," in *Supreme Court Decision-Making: New Institutional Approaches* (Cornell Clayton and Howard Gillman eds., 1999)

David M. O'Brien, "Institutional Norms and Supreme Court Opinions: On Reconsidering the Rise of Individual Opinions," in id.

Sue Davis, "The Chief Justice and Judicial Decision-Making: The Institutional Basis for Leadership on the Court," in id.

Suggested Reading

Rogers M. Smith, "Political Jurisprudence, the 'New Institutionalism,' and the Future of Public Law." 82 AM POL. SCI. REV. 89 (1988)

F. The Counter-Majoritarian Thesis: Myth or Reality?

Robert Dahl, "Decision-Making in a Democracy: The Supreme Court as National Policy-Maker," 6 J. PUB. LAW 179 (1957)

Jonathan Casper, "The Supreme Court and National Policy Making," 70 AM. POL. SCI. REV. 50 (1976)

Gerald Rosenberg, "Review Essay - The Road Not Taken: Robert A. Dahl's Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker," 50 EMORY L.J. 613 (2000)

Amy Steigerwalt, "Dahl Revisited: A Look 45 Years Later to Assess the Changing Role of the Supreme Court in National Policy-Making," draft manuscript

Suggested Reading

William Mishler and Reginald S. Sheehan, "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions," 87 AM. POL. SCI. REV. 87 (1993)

Helmut Norpoth and Jeffrey A. Segal, "Popular Influences on Supreme Court Decisions," 88 AM. POL. SCI. REV. 711 (1994)

Roy B. Flemming and B. Dan Wood, "The Public and the Supreme Court: Individual Justice Responsiveness to American Policy Moods," 41 AM. J. POL. SCI. 468 (1997)

V. So What? Part One: The Supreme Court's Impact

A. Institutional Compliance

1. Compliance of lower courts

Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron, "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interaction," 38 AM. J. POL. SCI. 673 (1994)

Suggested Reading

Donald R. Songer and Reginald S. Sheehan, "Supreme Court Impact on Compliance and Outcomes: *Miranda* and *New York Times* in the United States Courts of Appeals," 42 W. POL. Q. 297 (1993)

2. Compliance of Congress

Jeffrey A. Segal, "Separation-of-Powers Games in the Positive Theory of Congress and the Courts," 91 AM. POL. SCI. REV. 28 (1997)

Joseph Ignagni and James Meernik, "Explaining Congressional Attempts to Reverse Supreme Court Decisions," 47 POL. RES. Q. 353-371 (1994)

Suggested Reading

Lori Housseger and Lawrence Baum, "Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation," 43 AM. J. POL. SCI. 162 (1999)

William N. Eskridge, "Overriding Supreme Court Statutory Decisions," 101 Yale L. J. 331 (1991)

B. The Court and Public Opinion

Gregory A. Caldeira, "Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court," 80 AM. POL. SCI. REV. 1209 (1986)

Suggested Reading

Charles H. Franklin and Liane C. Kosaki, "The Republican School Master: The Supreme Court, Public Opinion, and Abortion," 83 AM. POL. SCI. REV. 751 (1989)

Gregory A. Caldeira and James L. Gibson, "The Etiology of Public Support for the Supreme Court," 36 AM. J. POL. SCI. 635 (1992)

Roy B. Flemming, John Bohte, and B. Dan Wood, "One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947-1992," 41 AM. J. POL. SCI. 1224 (1997)

Timothy Johnson and Andrew Martin, "The Public's Conditional Response to Supreme Court Decisions," 92 AM. POL. SCI. REV. 299 (1998)

C. The Court and Social Change

David M. O'Brien, *Storm Center*, Ch. 6 - "The Court and American Life"

Charles A. Johnson and Bradley C. Canon, *Judicial Policies: Implementation and Impact* (1984) (selections)

Gerald Rosenberg, *The Hollow Hope*, Chapters 1 & 4

VI. So What? Part Two: Defending the Political Court

Terri Peretti, *In Defense of a Political Court*, Part II (1999)