

Spring 2007: Thursday 6:10 - 8:40 Gambrell 353

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Office Hours
T 1:30-3:30
W 10:30 - noon

Background:

This is a seminar on the comparative study of courts, judicial process, and judicial behavior, and the role of courts in politics. It will include an intensive examination of a broad spectrum of recent and classical research on courts. Students will be expected to write a major, original research paper on comparative courts but will not have a final exam. It is assumed that students will enter the course with a substantial substantive and methodological background for the study of the courts. It would be helpful for students to have had either a general proseminar in American Politics or in Comparative Politics. For those without an adequate background in the study of the courts, the following background reading is suggested:

Segal & Spaeth, The Supreme Court and the Attitudinal Model Revisited

Orientation and Goals

The goals for this semester will include:

- a. to provide an overview of the most important scholarship on the behavior of judges and on courts as political and legal institutions. This overview should provide a good background on the courts for those preparing for comprehensive exams in either Comparative Politics or American politics and to teach an undergraduate course on the courts.
- b. to sharpen the analytical skills of students of American and Comparative politics.
- c. to prepare students to do empirical research on courts from a cross-national perspective.

In order to accomplish these goals, students will be expected to:

1. read and critique the written work of the other students in the class.
2. come to each class prepared to discuss and critically analyze the assigned reading for the class. Each student's preparation for each class should be based on the assumption that they will be responsible for leading and stimulating the class discussion of the most significant and interesting topics from the assigned reading. Every student will be expected to participate in discussion every class.
3. Write a research paper.
4. Participate in relevant professional activities of the department.
5. Write a series of four short (about 2 pages each) papers on the week's assigned reading. Each paper will be due at least 25 hours before the class at which the readings will be discussed. Each paper should provide a synthesis (not a summary) of the week's reading (including, for example, how all or part of the readings fit together or complement a previous week's reading), a critical review of the shortcomings of the readings - especially methodological problems, thoughts interesting gaps in the readings - interesting questions not adequately addressed, etc, and interesting hypotheses or ideas for future research.

Required Reading - Books Available in Bookstore

- Baum, the Puzzle of Judicial Behavior (Michigan, 1997)
Baum, Judges and their Audiences (Princeton, 2006)
Epp, The Rights Revolution (Chicago, 1998)
Flemming, Tournament of Appeals (UBC Press, 2004)
Greene, et. al., Final Appeal: Decision Making in the Canadian Courts of Appeal (Lorimer, 1998)
Haynie, Judging in Black & White (Lang, 2003)
Helmke, 2005. Courts Under Constraints: Judges, Generals, and Presidents in Argentina. (Cambridge, 2005)
Jacob, et. al., Courts, Law and Politics in Comparative Perspective (Yale, 1996)
Malleson & Russell, Appointing Judges in an Age of Judicial Power (U Toronto 2006)
Alec Stone Sweet, Governing with Judges: Constitutional Politics in Europe (Oxford, 2000)
Sieder, Schjolden & Angell (eds) The Judicialization of Politics in Latin America (Palgrave MacMillan 2005)
Tate & Vallinder, The Global Expansion of Judicial Power (NYU press, 1995)
Widner, Building the Rule of Law (Norton, 2001)

Other Useful Books - left on Shelves - I will put as much of the Required Reading as Possible on Blackboard as pdf files

- Becker, Comparative Judicial Politics (1970)
Carter, Reason in Law
Coffin, On Appeal (1994)
Coffin, Ways of a Judge
Epstein & Knight, The Choices Justices Make (1998)
Glick, Supreme Courts in State Politics.
Holland, Judicial Activism in Comparative Perspective (1991)
Jackson & Tate, Comparative Judicial Review and Public Policy (1992)
Jackson, The United Kingdom Confronts the European Convention on Human Rights (1997)
Hensley & Kuersten, "Studying the Studies" (1995)
Johnson & Canon, Judicial Policies: Implementation and Impact
Langer, Judicial Review in State Supreme Courts (SUNY, 2002)
Maltzman, Spriggs, Wahlbeck, Crafting Law on the Supreme Court
Murphy, Elements of Judicial Strategy.
Platto, Trial and Court Procedures Worldwide (1991)
Posner, The Problems of Jurisprudence
Prillaman, The Judiciary & Democratic Decay in Latin America (2000)
Richardson & Vines, Politics of the Federal Courts.
Rohde and Spaeth, Supreme Court Decision Making.
Schmidhauser, Comparative judicial Systems: Challenging the Frontiers in Conceptual & Empirical Analyses (1987)
Schubert, The Judicial Mind.
Schubert & Danelski, Comparative Judicial Behavior (1969)
Shapiro, Courts: A Comparative & Political Analysis (1981)
Songer, The Transformation of the Supreme Court of Canada: An Empirical Examination (draft 2006) (available on Blackboard)
Songer, Sheehan, & Haire, Continuity & Change on the US Courts of Appeals
Volcansek, Constitutional Politics in Italy: the Constitutional Court

(2000)

Waltman & Holland, The Political Role of Law Courts in Modern Democracies
(1988)

Assignments and Grading:

Your grade will be composed of the following components:

- | | | |
|---|-----|-----|
| 1) class and professional participation | 25% | |
| 2) short papers & class presentations | | 25% |
| 4) research paper | 50% | |

All written work should be produced using Wordperfect or some other appropriate word processing program.

Participation requirement: In addition to vigorously participation in the discussion of course readings, you will be expected to:

1. Attend & participate in all colloquia on Comparative & American politics.
2. Attend presentations of any comparative or American politics students preparing to go to job interviews.
3. Attend relevant talks & receptions sponsored by the Walker Institute and PSRW.

Abbreviations Used:

APSR = American Political Science Review
AJPS = American Journal of Political Science
JOP = Journal of Politics
PRQ = Political Research Quarterly
BJPS = British Journal of Political Science
IPSR = International Political Science Review
CJPS = Canadian Journal of Political Science

Note: An Asterick * notes Supplemental reading I will try to say something about if there is time.

Class Schedule

WEEK 1 Jan 18 **The Judicialization of Politics**

Schmidhauser, ch. 1
Shapiro, Ch. 1
Tate & Vallinder, ch. 1, 2, 3
Baum, Puzzle ch. 1

WEEK 2 Jan 25 - **Courts in Policy Making: The Common Law World**

Jacob, Courts, Law & Politics, chapt. 1, 2,3 (Intro, US, England)
Tate & Vallinder, ch. 5, 6, 8, 9, 25,
Shapiro, ch. 2- English courts & Judicial Independence
Holland, ch. 2, 3, 4
Jackson & Tate, Ch. 1, 3, 10
Codebook for the Comparative Courts Database

SUPPLEMENTAL

- *Songer, ch. 1,6
- *Australia - Galligan, Politics of the High Court: Australia (1987)
- Brodie, Friends of the Court (2002)
- Songer, Sheehan, & Haire, Continuity & Change on the US Courts of Appeals
- Morton & Knopff, The Charter Revolution & the Court Party (2000)
- *Sterett, "Judicial Review in Britain" Comparative Political Studies 26:421-42 (1994)
- Beller, "Benevolent Illusions in a Developing Society - India" Western Political Quarterly 36:513-32 (1983)
- Sunkin, "What is Happening to Applications for Judicial Review" Modern

Law

- Review 50:432-67
- McCormick & Greene, Judges and Judging: Inside the Canadian Judiciary (1990)
- Sunkin, Judicial Review in Perspective (1996)
- Newberg, Judging the State: Courts & Constit Politics in Pakistan (1994)
- Schmidhauser, ch. 3 (Canada); ch. 7 (England)
- *Waltman & Holland, ch. 1, 2, 3, 4, 6 (US, Australia, England, Canada)
- *Cole, "Three Constitutional Courts: a Comparison" APSR 53:963-94 (1959)

WEEK 3 Feb 1- Courts in Policy Making: Europe

- Alec Stone Sweet, Governing with Judges: Constitutional Politics in Europe (Oxford, 2000)
- Jacob, Courts, Law & Politics, chapt. 4, 5, 6, 7 (France, Germany, Japan)
- Tate & Vallinder, ch. 14, 15, 16, 17, 22, 23, 24
- Holland, ch. 7
- Jackson & Tate, Ch. 4, 6

SUPPLEMENTAL

- *Waltman & Holland, ch. 5, 7, 8, 10 (France, Germany, Italy, Japan)
 - Volcansek, Judicial Politics in Europe: An Impact Analysis (1986)
 - Cappelletti, The Judicial Process in Comparative Perspective (Law - K2110.C26)
 - *Schubert, Political Culture and Judicial Behavior, vol. 1
 - Dionisopoulos, "Judicial Review and Civil Rights in Japan: the First Decade" Western Political Quarterly 13:269-287 (1960)
 - Sunkin, "What is Happening to Applications for Judicial Review" Modern
- Law
- Review 50:432-67
 - Sweet, Governing with Judges: Constitutional Politics in Europe (2002)
 - Volcansek, Constitutional Politics in Italy: the Constitutional Court (2000)
 - Stone, The Birth of Judicial Politics in France (1992)
 - Edelman, Courts, Politics and Culture in Israel (1994)

WEEK 4 Feb 8- Courts in Policy Making: Latin America

- Sieder, Schjolden & Angell (eds) The Judicialization of Politics in Latin America (Palgrave MacMillan 2005)

SUPPLEMENTAL

Prillaman, The Judiciary & Democratic Decay in Latin America (2000)

WEEK 5 Feb. 15 Creating the Rule of Law

Widner, Building the Rule of Law: Francis Nyalali and the Road to Judicial

Independence in Africa (2001)

Tate & Vallinder, ch. 26

WEEK 6 Feb. 22 The Rights Revolution

Epp, The Rights Revolution (1998)

Schmidhauser, ch. 9 (US & Britain)

Tate & Vallinder, ch. 15

Epp, "Do Bills of Rights Matter ?" APSR 90:765-779 (1996)

Clark, "Importance of Institutional Context on Judicial Decision Making"
(available on Blackboard)

SUPPLEMENTAL

Manfredi, Judicial Power and the Charter: Canada and the paradox of Liberal

Constitutionalism (1993)

Jackson, The United Kingdom Confronts the European Convention on Human Rights (1997)

Dionisopoulos, "Judicial Review and Civil Rights in Japan: the First Decade

" Western Political Quarterly 13:269-287 (1960)

WEEK 7 Mar 1 Courts and Authoritarian Regimes

Haynie. 2003. Judging in Black and White: (South Africa)

Tate & Haynie, "Authoritarianism and the Functions of Courts"
(Philippines)

Law and Society Review 27: 707-740.

Tate, "Courts and Crisis Regimes" PRQ 46:311-38 (1993).

Toharia, "Judicial Independence in an Authoritarian Regime" Law & Society Review Spring: 475-490 (1975)

SUPPLEMENTAL

Verner, "Supreme Court Independence in Latin America" Journal of Latin American Studies 16:463-506 (1984)

McAdams, Transitional Justice and the Rule of Law in New Democracies

Tate, "Courts & Crisis Regimes: a Theory Sketch with Asian Case Studies"
PRQ 46: 311-38 (1993)

WEEK 8 Mar. 8 JUDICIAL DECISION MAKING: THE LEGAL MODEL

Baum, Puzzle ch. 2
Posner, Jurisprudence, intro & ch. 1,2,5,6
Friedman, Taking Law Seriously" (Blackboard)
Shapiro, Ch. 3 (Civil Law countries)
Carter, Reason in Law, ch. 1-3
Ostberg & Wetstein, "Search & seizure Decisions of the Sup Ct of Canada"
CJPS 31:767-787.
Songer, ch. 5,8 (Blackboard)
Lindquist & Songer, "A Gravitic Model of Supreme Court Decision
Making" (on Blackboard)

SUPPLEMENTAL

*Segal "The search and Seizure Cases" APSR 78:891-900(1984)
*Coffin, On Appeal, Ch. 1,2, 12, 13
*Coffin, The Ways of a Judge
*Klein, David. Making Law in the United States Courts of Appeals
(Cambridge 2002)
Choper, Judicial Review and the National Political Process
Dworkin, A Matter of Principle
Carter, Contemporary Constitutional Lawmaking
Nowak & Rotunda, Constitutional Law
Zemans (83)

(March 10 - 18 **SPRING BREAK**)

WEEK 9 Mar. 22 DECISION MAKING: THE ATTITUDINAL MODEL

Schubert, Jud. Mind - ch. 1,2,3,5
Schubert & Danelski - Comparative Judicial Behavior (especially chapt. 1,
5,6,7,9,10,11,12)
Baum, Puzzle ch. 3
Robertson, "Judicial Ideology in the House of Lords" BJPS 12: 1-25 (1982)
Segal & Cover, "Ideological Values and the Votes of Supreme Court
Justices"
APSR 83: 557-65 (1989)
Ostberg, Wetstein & Ducat, "Attitudinal Dimensions of Supreme Court
Decision Making in Canada: the Lamer Court." PRQ 55:235-256 (2002)
Songer, ch.7

SUPPLEMENTAL

Blackshield, "Quantitative Analysis: High Court of Australia" Lawasia
3:1-
66 (1972)
Robertson, Judicial Discretion in the House of Lords (1998)
Schubert, "Judicial Attitudes and Policy Making in the Dixon court"
Osgoode
Hall Law Journal 7 (October 1969)
*Segal & Spaeth, Supreme Court & the Attitudinal Model Revisited (2002)
*November 1996, AJPS - Symposium on Attitudinal Model (vol 40., #4)
Segal & Spaeth; Brisbin; Knight & Epstein; Brenner & Stier;
Songer & Lindquist; Segal & Spaeth reply.
*Rohde & Spaeth, S.C. Decision Making - ch. 4,7
Pritchett, The Roosevelt Court
Epstein, et. al. JOP 60:801-818 (1998)
Tate (81)

Tate & Handberg (91)
Heard, "The Charter in the Supreme Court of Canada: The Importance of
Which Judges Hear an Appeal" CJPS 24: 289-308 (1991)
Spaeth and Segal (1999) Majority Rule or Minority Will

WEEK 10 Mar. 29 **DECISION MAKING: STRATEGIC APPROACHES**

Baum, Puzzle, chapt. 4
Helmke, Courts Under Constraints
Brace & Hall, JOP 59:1206-31 (1997)
Hall & Brace, SSQ 75:136-149 (1994).
Epstein & Knight, "Toward a Strategic Revolution in Judicial Politics: a
Look Back, a Look Ahead" PRQ 53:625-661 (2000)

SUPPLEMENTAL

Helmke, "Court-Executive Relations: Insecure Tenure and Strategic
Defection in Argentina" APSR
Iaryczower, et al., "Judicial Independence in Unstable Environments,
Argentina 1935-1998" (on Blackboard)
Langer, Judicial Review in State Supreme Courts (SUNY, 2002)
Richardson & Vines, Politics Fed Cts - ch. 1,6,8
*Songer, Segal, & Cameron, AJPS 38:673-696 (1994)
*Songer and Haire, "Alternative Approaches to the Study of judicial
Voting"
AJPS 36:963-82 (1992)
*Segal APSR 91:28-44 (1997)
*Epstein & Knight, The Choices Justices Make (1998)

Murphy, Elements Strategy chapt. 1,2,3,8
Maltzman & Wahlbeck, APSR 90:581-92 (1996)
*Maltzman, Spriggs, Wahlbeck, Crafting Law on the Supreme Court
Wahlbeck, Spriggs, & Maltzman AJPS 42:294-315 (1998)
Brenner, (1980)
Brenner, 1982
Howard (1968)

WEEK 11 **April 5 Appointing Judges**

Malleson & Russell, Appointing Judges in an Age of Judicial Power
Tate "Personal Attribute Model of the Voting Behavior of US Supreme Court
Justices" APSR 75:355-67 (1981)
Tate, "Recruitment of the British Higher Judiciary" IPSR 13:249-267
(1992)
Tate & Sittiwong, "Extending the Personal Attribute Model Across
Nations"
JOP 51:900-916 (1989)
Songer & Crews-Meyer, "Does Judge Gender Matter?" SSQ 81:750-762 (2000)

SUPPLEMENTAL

Atkins & Glick (1974) APQ 2:427
 Glick (1987) Judicature 70:228
 Songer, Sheehan, & Haire, ch.2.
 Canon (1972) Law & Society Rev. 13:570
 Volcansek, Judicial Selection: the Cross Evolution of French and American Practices
 Atkins, "Judicial Selection: American & English" Kentucky Law Review 77:577-615 (1988-89)
 Gadbois, "Indian Supreme Court Judges: a Portrait" Law & society Review 3:317-36.
 Tate, "Social backgrounds and Voting Behavior in the Philippine Supreme Court" Lawasia 3:317-38 (1972)
 Tate, "Paths to the Bench in Britain" Western Pol Q 28:108-29 (1975)
 Goldman, Picking Federal Judges
 Cameron, Cover, Segal (1990) APSR 84:525
 Silverstein, Judicious Choices
 Chase, Federal Judges
 Goldman, Judicature 72:318-30
 Slotnick, Judicature 71:317-24
 Watson, Politics of Bench & Bar
 Jackson, Judges
 Glick & Emmert, Judicatrue 70:228-35
 Canon, Law & Soc. R 6:579-94.
 Songer (1982a)
 Howard, Courts of Appeals chapt. 4

WEEK 12 April 12 Agenda Setting

Flemming, Tournament of Appeals (UBC Press, 2004)

Articles on cert TBA
 Perry, Deciding to Decide (selections)

WEEK 13 April 19 Party Capability Theory & Political Disadvantage Theory

Galanter (1974) "Why the Haves Come Out Ahead" Law & Society Rev 9:95
 McCormick, "Party Capability Theory & Appellate Success in the Supreme Court of Canada" Canadian Journal of Political Science 26:523-540 (1993)
 Haynie, "Resource inequalities and Litigation Outcomes in the Philippine Supreme Court" JOP 56:752-72.
Law & Society Review, 1999 (vol 33, #4) special issue on Galanter
 Songer, Kuersten & Kaheny, "Why the Haves Don't Always Come out Ahead"

PRO

53:537-556 (2000)

SUPPLEMENTAL

*Olson (1990) JOP 52:854

*Atkins, "Party Capability Theory in the English Court of Appeal" AJPS
35:881-903 (1991)

Songer & Sheehan, "Who Wins on Appeal ?" AJPS 36:235-258. (1992)

Wheeler, et.al. (1987) Law & Society Rev 21:403

WEEK 14 -April 26 Decision Making: Audiences & the Views of Judges

Baum, Judges and their Audiences (Princeton, 2006)

Greene, Final Appeal

SUPPLEMENTAL

Klein, Making Law in the United States Courts of Appeals

Paterson, The Law Lords (1982)

Howard, Courts of Appeals in the Federal Judicial System (1981)



???? **Concluding Reflections on the Comparative Study of Law & Courts**

Tate & Vallinder, ch. 27

Baum, ch. 5

Waltman & Holland, ch. 11

Holland, ch. 1

Brace & Hall, "Studying Courts Comparatively: the View from the American
States" PRO 48:5-30 (1995)