
POL 320
Judicial Politics
Princeton University Department of Politics
Fall 2019

MW 11:00am-11:50am
Julis Romo A97

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Office hours: Mondays 1:30-2:45pm,
or by appointment, Fisher 204

Introduction

This course examines the political science of law and courts, a branch of the discipline known as judicial politics. This is *not* a course on constitutional law, and the focus will not be on doctrinal analysis or close reading of cases (though we will discuss cases to illustrate and examine the topics of the course). Instead, we will evaluate courts as political institutions and judges as political actors. The topics we will study include: what courts do; different legal systems; the operation of legal norms; the U.S. judicial system; the power of courts; constraints on judicial power; judicial review; the origin of judicial institutions; how and why Supreme Court justices make decisions; case selection; conflict between the Court and the other branches of government; decision making and conflict within the judicial hierarchy; the place of courts in American political history; and judicial appointments. Our main focus will be the American legal system and U.S. federal courts, but we will discuss other courts and legal systems as well.

Course Requirements

Your grade in this class will be based on the following:

- Midterm Exam: 25%
- In-class final Exam: 30%
- Precept Participation: 15%
- Research Paper: 30%

Note that it will be very difficult to do well in the class without attending lecture. In addition, I will try to make lecture as interactive as possible. Participation in lecture will also be appreciated. If you have a question at any time, please ask it.

Exams

The midterm exam will be given in class on **October 23rd** (the last class before Fall Break). The final exam will be given during the university exam period in May. Makeup exams will not be given except under extreme circumstances and with official university permission.

The final exam will be given in class during the university exam period in January.

Final Paper

Each student will be responsible for writing a research paper, the goal of which is to study the internal politics behind a Supreme Court decision. You will select a case for which relevant information is available. You will then make use of appropriate resources to illustrate and explore the interactions of the justices leading up to their final decisions and opinions, showing how they bargained over policy and/or how they aggregated their preferred legal rules. More details on the paper can be found on Blackboard.

The paper is due on **Tuesday Dec. 10th at 12pm** (this is the day before the last lecture). However, you should start thinking about potential cases early in the semester. We will cover the material you will apply in the paper immediately after Fall Break—at that point you should begin working in earnest on the paper.

Late papers will be penalized a third-of-a-letter grade (e.g. an “A” would become an “A-”) for every 24 hours late, unless there is a legitimate, documented excuse.

Precepts

Attending one of the precept sections is mandatory, and all students will be expected to contribute to each week’s discussion. Please note that there are separate readings for the lectures and the precepts, though generally the topics will overlap. It is essential that you do the readings for each week’s precepts (though in some week there will be no additional readings). If you have not done them, I would prefer that you not attend precept that week. To be clear, your grade will be negatively affected by not attending precept. But the penalty will be the same as showing up and not participating at all. At the start of each precept I will give students the opportunity to ask questions about that week’s lectures. So, if you are confused about something, please ask for clarification.

Participation in precept will determine 15% of your overall grade in the class.

A Note on Cell Phones and Laptop Use

Please disable cell phones and other devices that make noise or otherwise distract you (or your fellow students) from class. Laptop computers are permitted in class, but I would strongly urge you to disable the Internet during class to prevent any temptations for multitasking.

Books and Readings

The following books are available at Labyrinth Books:

- **[MPEK]** Walter F. Murphy, C. Herman Pritchett, Lee Epstein, and Jack Knight. 2006. *Courts, Judges, and Politics: An Introduction to the Judicial Process*. 6th edition.
- **[PRIMER]** William Miller. *A Primer on American Courts*. 2005. Pearson
- **[CHOICES]** Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. CQ Press.

Unfortunately, each of these books is overpriced if purchased new. Fortunately, several used copies of each book appear to be available on websites such as amazon.com, www.fetchbook.info, and www.abebooks.com at lower prices—you are welcome to buy a used edition. I have placed copies of each book on reserve at Firestone.

In addition, note that the 5th edition of MPEK is very similar to the 6th edition: if you purchase the 5th edition, I have indicated in the class readings where the two differ. There are also additional readings that are available through Blackboard **[BB]**; the “Course Materials” section contains a zip file of the lecture and precept readings.

Dates to Remember

- **October 23rd**: Midterm exam
- **December 10th**: Final paper due
- **During exam period in January**: In-class final exam

Class Schedule and Readings

Note that this schedule is subject to change, though you will be notified of any changes well in advance.

Week 1 (9/11): Introduction to Course

- **Lecture**
 - No readings this week (though you may wish to start the Week 2 reading)
- **Precept**
 - *No precept this week*

Week 2 (9/16 & 9/18): Why Study Courts as Political Institutions? And How?

- **Lecture**
 - MPEK: 1.0—1.5, 2.1 (“.0” for an MPEK reading means the entire part of the chapter before the readings; e.g., for Ch. 1, this is pp. 3-20.)
 - PRIMER: Ch. 1
 - Charles Cameron, “What is Political Science?” [ER] in *A Quantitative Tour of the Social Sciences*, ed. Andrew Gelman and Jeronimo Cortina, pp. 207-222 **[BB]**
- **Precept**
 - Posner, “Foreword: A Political Court” **[BB]** (We will focus on pp. 31-84, but feel free to read entire article.)

Week 3 (9/23 & 9/25): The American Judicial System

- **Lecture**
 - MPEK: 2.0, 3.0, 3.1-3.5
 - PRIMER: Ch. 4
 - John Ferejohn & Larry Kramer. 2002. “Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint.” *NYU Law Review* [BB]
- **Precept**
 - North & Weingast, “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England” [BB]
 - Ramseyer, “The Puzzling (In)dependence of Courts: A Comparative Approach” [BB]

Week 4 (9/30 & 10/2): Judicial Power / Fact-Finding

- **Lecture**
 - MPEK: 6.0, 7.0, 8.0, 9.0
 - PRIMER: Ch. 2
 - Ward Farnsworth, “*Ex ante* and *ex post*” [BB]
 - *New York Times* series on American Exceptionalism [BB]
 - Adam Liptak and Ethan Bonner, “Justices Bar Mandatory Life Terms for Juveniles.” *New York Times*. June 25, 2012 [BB]¹
- **Precept (10/1)**
 - Lecture catchup – no additional readings

Week 5 (10/7 & 10/9): Legal Rules/Common vs. Civil Law Systems

- **Lecture**
 - MPEK: 10.1, 10.5, 10.6, 10.7 [10.6, 10.7, 10.8 in 5th ed.]
 - Ward Farnsworth, “Rules & Standards” [BB]
- **Precept (10/8)**
 - Watch “Inside the Jury Room” in preparation for this precept and come prepared to discuss it [Available on *Video Reserves* on Blackboard.]

Weeks 6-7 (10/14, 10/16 & 10/21): Politics and Precedent on the U.S. Supreme Court

- MPEK: 10.0, 11.0, 12.0, 12.2, 12.3, 12.4
- PRIMER: Ch. 5
- **Precept (10/15):**
 - Rule exercises—no additional readings
- **Precept (10/22)**
 - Midterm review– no additional readings

MIDTERM: 10/23

¹ This article provides an update on one of the doctrines—life sentences for juveniles—that was later struck down by the Supreme Court subsequent to the publication of the original series.

FALL BREAK: 10/28 & 10/30**Week 8 (11/4 & 11/6): An Introduction to the Strategic Account, and Case Selection**

- **Lecture**
 - MPEK 13.0
 - CHOICES: Ch. 1
- **Precept (11/5)**
 - Perry, *Deciding to Decide*, excerpts [BB]

Week 9 (11/11 & 11/13): The Strategic Account Continued: Bargaining on the U.S. Supreme Court

- **Lecture**
 - CHOICES: Ch. 2-3
 - Clark, “Bargaining and Opinion Writing on the U.S. Supreme Court.” [BB]
- **Precept (11/12)**
 - Bargaining exercises—no additional readings

Week 10 (11/18 & 11/20): Bargaining on the Supreme Court Continued/Introduction to the Judicial Hierarchy

- **Lecture**
 - CHOICES: Ch. 4
 - MPEK: 13.6-13.7 [13.8-13.9 in 5th ed.]
 - Lewis Kornhauser, “Adjudication by a Resource-Constrained Team: Hierarchy and Precedent in a Judicial System.” 1995. *Southern California Law Review*. [BB]
- **Precept (11/19)**
 - In-class experiments, no additional readings

Week 11 (11/25): The Judicial Hierarchy Continued

- **Lecture**
 - MPEK: 7.1, 8.3, 13.3
 - Farnsworth & Posner, “Agency” [BB]
 - Benesh & Martinek, “Lower Court Compliance with Precedent.” [BB]
 - Liptak & Blumenthal, “Death Sentences in Texas Cases Try Supreme Court’s Patience” [BB]
- **Precept**
 - *No precept—have a Happy Thanksgiving.*

Week 12 (12/2 & 12/4): The Judicial Hierarchy Continued

- **Lecture**
 - MPEK: 13.3
 - Kastellec, “Hierarchical and Collegial Politics on the U.S. Courts of Appeals” [BB]
 - Kastellec, “Racial Diversity and Judicial Influence on Appellate Courts.” [BB]

- Coffin, “Ways of a Judge” (excerpts) [BB]
- **Precept (12/3)**
 - In-class experiments, no additional readings

Week 13 (12/9 & 12/11): The Separation of Powers and Judicial Selection

- **Lecture**
 - CHOICES: Ch. 5
 - MPEK: review 8.0, 4.0, 4.5 [4.4 in 5th Edition]
 - Kastlelec, Lax & Phillips. “The Role of Public Opinion in Supreme Court Confirmations” [BB]
 - **OPTIONAL**: MPEK: 14.0
- **Precept (12/10)**
 - Paper presentations [more information to come]

Final paper due on Dec. 10th at 12pm