



## RPOS 541: FIELD SEMINAR IN PUBLIC LAW

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Location: TBA  
Time: T 5:45-8:35  
Office Hours: (in HU 016)  
MW: 8:00-9:30am  
and by appointment

**Course Description.** This course offers a survey of the field of *public law* and approaches to studying public law in the social sciences. Public law conventionally consists of constitutional law, administrative law, criminal law, and public international law, i.e., those areas of law that govern the conduct of public institutions (state action). The course begins with these definitions of public law – establishing and problematizing the conceptual limits of the field, especially considering the place of private law – and situates the study of public law within broader concerns with democracy and development. We then review methodological issues and various approaches to studying public law, and proceed to examine existing research covering four major theoretical questions of persistent interest in the field: (1) Why build or empower legal institutions (e.g., courts)? (2) Once in place, how do actors activate legal institutions? (3) Once activated, why do legal institutions decide cases or respond the way they do? (4) Once legal institutions respond, what is the broader societal or systemic impact of this response? Each theoretical area familiarizes students with core works and authors, and provides a platform for considering recent work that is more comparative and international in nature, and that increasingly examines objects other than courts and other than formal institutions. Throughout, students are encouraged to revisit the relationships between law, democracy, and development.

### Readings

The main texts for this course are:

- 1) Crowe, Justin. 2012. *Building the Judiciary: Law, Courts, and the Politics of Institutional Development*. Princeton: Princeton University Press.
- 2) Epp, Charles. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.
- 3) Segal, Jeffrey, and Harold Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.
- 4) Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.
- 5) Rosenberg, Gerald. 2008. *The Hollow Hope: Can Courts Bring About Social Change?* 2<sup>nd</sup> ed. Chicago: University of Chicago Press.

Used and new copies of these books are available at various online booksellers. I also have extra copies of most that I will place on reserve at Dewey Library. These books will be supplemented periodically with journal articles and other short pieces. Please see the class schedule below for a detailed list of the reading assignments. Articles and other short pieces

are available on Blackboard or via the library's electronic databases. Where otherwise unavailable, I will provide materials for you.

## **POLICIES**

### **Grading**

<u>Participation:</u>	10%
<u>Presentations on readings:</u>	20%
<u>Book review:</u>	10%
<u>Annotated outline:</u>	30%
<u>Mock comprehensive exam:</u>	30%

Participation. This is a graduate seminar, not a lecture class. Participation is essential.

Presentations. Each person will give two presentations over the course of the semester on the week's readings. The presentations should summarize key points in the readings – including concepts, theories, methods, and findings – and generate questions for further discussion. For instance, how do the authors conceptualize public law? How do the authors measure judicial power? What is the main theoretical question? Is the causal argument clear? Does the evidence support the argument? Why or why not? I will also provide discussion questions prior to the week's readings, and the presentations should respond to these questions. At the start of the semester, we will establish a schedule for presentations.

Book review. Choose any of the assigned books for the course and write a review, including a discussion of key concepts and the author's definitions, theoretical framework, methods, and findings. Reviews should be no less than 1000 words (and no more than 1200), and are due before we meet to discuss the book you have chosen to review.

Annotated outline. Throughout the semester, you should keep a running list of all the required readings for the class, and at least one paragraph under each reading that summarizes our discussion in class of the reading. For instance, if there are five articles assigned in a week, you should have five entries in your outline and a minimum of one paragraph under each entry. I will ask that you submit these annotated outlines of the readings periodically during the semester. Your grade for this component of the class is for consistent progress towards the full annotated outline, which will include all but the last week of class.

Mock comp. At the start of the final week of class, I will distribute a mock comprehensive exam. Instead of the normal day to complete the exam, you will have one week in which to do so. The timing of the mock comp is not flexible. No extensions or rescheduling will be allowed.

**Email.** I expect you to check your email. You are responsible for material sent by email. However, if you have a lengthy question or comment regarding the class, please do not communicate this by email; rather, please raise these issues in class or during office hours.

**Academic Integrity.** All students must familiarize themselves with the *Standards of Academic Integrity* on the University's website and pledge to observe its tenets in all written and oral work, including oral presentations, quizzes and exams, and drafts and final versions of essays. The full standards and examples of dishonest behavior are available at: [http://www.albany.edu/undergraduate\\_bulletin/regulations.html](http://www.albany.edu/undergraduate_bulletin/regulations.html).

**Americans with Disabilities Act (ADA).** Qualified students with disabilities needing appropriate academic adjustments should contact me as soon as possible to ensure your needs are met in a timely manner.

**Miscellaneous.** If you feel you need any help or simply want clarification on any of the material, please do not hesitate to raise your question in class or approach me outside of class. I will hold regular office hours throughout the summer session. If you cannot arrange to come talk with me during these hours, please contact me for an appointment.

## CLASS SCHEDULE

### WEEK 1 (Aug 26)

Introduction: overview of course; history of public law/judicial politics; introductions

- Readings:
  - Select a paper from APSA's annual meeting and post a note about it to Blackboard discussion board.
    - Sections:
      - Law and Courts
      - Constitutional Law and Jurisprudence

### WEEK 2 (Sep 2)

#### What is Public Law?

- Readings:
  - Shapiro, Martin. 1964. "Political Jurisprudence." *Kentucky Law Journal*: 294-345.
  - Shapiro, Martin. 1972. "From Public Law to Public Policy, or the 'Public' in 'Public Law'." *PS* 5(4): 410-418.
  - Murphy, Walter, and Joseph Tannenhaus. 1972. "The Development of the Study of Public Law" and "The Future of Public Law." In Murphy and Tannenhaus, *The Study of Public Law*. New York: Random House.
  - Shapiro, Martin. 1993. "Public Law and Judicial Politics." In Ada Finifter. *Political Science: The State of the Discipline II*. Washington, D.C.: American Political Science Association.
  - Scheingold, Stuart. 2008. "The Path of the Law in Political Science: De-centering Legality from Olden Times to the Day before Yesterday." In Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, eds. *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press.
  - Spaeth, Harold. 2008. "Reflections about Judicial Politics." In Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, eds. *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press.
  - Shapiro, Martin. 2008. "Law and Politics: The Problem of Boundaries." In Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, eds. *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press.
- Recommended:
  - Symposium, "Whither Political Jurisprudence?" *Western Political Quarterly*, 1983.
    - Harry Stumpf, Martin Shapiro, David Danelski, Austin Sarat, David O'Brien
  - Ferejohn, John, Frances Rosenbluth, and Charles Shipan. 2007. "Comparative Judicial Politics." In Carles Boix and Susan Stokes, eds. *The Oxford Handbook of Comparative Politics*. Oxford.
  - Segal and Spaeth. 2002. Ch. 1, "Supreme Court Policy Making", and Ch.4, "A Political History of the Supreme Court"
  - Tate, C. Neal, and Torbjorn Vallinder. 1995. "The Global Expansion of Judicial Power: The Judicialization of Politics." In Tate and Vallinder, eds. *The Global Expansion of Judicial Power*. New York: New York University Press, 1-10.
  - Vallinder, Torbjorn. 1995. "When the Courts Go Marching In." In Tate and Vallinder, Ch. 2 (13-26)

- Tate, C. Neal. 1995. "Why the Expansion of Judicial Power?" In Tate and Vallinder, Ch. 3 (27-38)
- Sieder, Rachel, Line Schjolden, and Alan Angell. 2005. "Introduction." In Sieder, Schjolden, and Angell, eds. *The Judicialization of Politics in Latin America*. New York: Palgrave MacMillan, 1-20.
- UNDP. 2004. *Democracy in Latin America*. pp. 49-73 (from "Theoretical Groundings", focus on pp. 62-73, and 102-118 on "Civil Citizenship")
- Widner, Jennifer. 2004. "How Some Reflections of the United States' Experience May Inform African Efforts to Build Court Systems and the Rule of Law." In Gloppen, Gargarella, and Skaar, eds. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. London: Frank Cass. pp. 27-45.
- Sen, Amartya. 2000. "Law and Development Goals." World Bank speech; (also at: <http://go.worldbank.org/9OTC3P5070>)
- USAID Strategic Framework 2010 (pp. 1-20). E-Reserve (also at: [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/technical\\_areas/rule\\_of\\_law](http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law))
- Marshall, T.H. 1965. "Citizenship and Social Class." In *Class, Citizenship, and Social Development*. New York: Doubleday.
- UNDP Report 2004 (see above)
- Sen, Amartya. 1999. "Freedom as the Foundation of Justice." (E-Reserve)
- Rhode, Deborah L. 2004. *Access to Justice*. New York: Oxford University Press.
- Legal Services Corporation. 2005. *Documenting the Justice Gap in America*. (E-Reserve)
- Sen, Amartya. 1999. *Development as Freedom*. New York: Knopf.
- Symposium on Amartya Sen's *Development as Freedom*. 2002. *Studies in Comparative and International Development* 37(2).
  - Peter Evans. "Collective Capabilities, Culture, and Amartya Sen's *Development as Freedom*."
  - Frances Stewart and Severine Deneulin. "Amartya Sen's Contribution to Development Thinking."
  - Marc Fleurbaey. "Development, Capabilities, and Freedom."
  - Amartya Sen. "Reponse to Commentaries."
- Mainwaring, Scott, and Christopher Welna, eds. 2003. *Democratic Accountability in Latin America*. New York: Oxford University Press.
- Gloppen, Siri, Roberto Gargarella, and Elin Skaar, eds. 2004. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. London: Frank Cass.
- Diamond, Larry, Marc F. Plattner, and Andreas Schedler, eds. 1999. *The Self-Restraining State: Power and Accountability in New Democracies*. Boulder, CO: Lynne Rienner.
- Brunello, Anthony R., and Lehrman, Kenneth F., III. 1991. "Comparative Judicial Politics: Case Studies of the Federal Republic of Germany and the Republic of India." *Comparative Political Studies* 24(3): 267-298.
- Jarquín, Edmundo, and Fernando Carrillo, eds. 1998. *Justice Delayed: Judicial Reform in Latin America*. Washington, D.C.: Inter-American Development Bank.
- Eckstein, Susan, and Timothy Wickham-Crowley, eds. 2003. *What Justice? Whose Justice? Fighting for Fairness in Latin America*. Berkeley: University of California Press.
- Wilson, Bruce. 2007. "Claiming individual rights through a constitutional court: The example of Costa Rica." *International Journal of Constitutional Law* 5(2): 242-257.

## WEEK 3 (Sep 9)

### Approaches to Public Law

- Readings
  - Jeffrey Segal. 2008. "Judicial Behavior." In Whittington, Keleman, and Caldeira, eds. *The Oxford Handbook of Law and Politics* 19-33

- Pablo Spiller and Rafael Gely. 2008. "Strategic Judicial Decision-Making." In Whittington, Keleman, and Caldeira, eds. *The Oxford Handbook of Law and Politics* 34-45
- Rogers Smith. 2008. "Historical Institutionalism and the Study of Law." In Whittington, Keleman, and Caldeira, eds. *The Oxford Handbook of Law and Politics* 46-62.
- Lynn Mather. 2008. "Law and Society." In Whittington, Keleman, and Caldeira, eds. *The Oxford Handbook of Law and Politics* 681-697.
- Julie Novkov. 2010. "Legal Archeology." *Political Research Quarterly*.

## WEEK4 (Sep 16)

### Thinking Method(ologically)

Methodological Foundations: Thinking about the way you think

- Required reading:
  - Epstein, Lee, and Gary King. 2002. "Rules of Inference." *University of Chicago Law Review* 69(1).
  - Gerring, John. 2008. "Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques." In Janet Box-Steffensmeier, Henry Brady, and David Collier, eds. *The Oxford Handbook of Political Methodology*. Oxford: Oxford University Press. Ch. 28.
  - A Science of Comparative Judicial Politics? An Exchange
    - SKIM this first piece
      - Tate, C. Neal and Stacia L. Haynie. 1993. "Authoritarianism and the Functions of Courts: A Time-Series Analysis of the Philippine Supreme Court, 1961-1987." *Law & Society Review* 27: 707.
    - Intro to Gilman-Tate-Haynie exchange. 1994. *Law & Society Review* 28(2): 353-54.
    - Gilman, Howard. 1994. "On Constructing a Scientific Comparative Judicial Politics: Tate and Haynie's 'Authoritarianism and the Functions of Courts'." *Law & Society Review* 28: 355-376.
    - Tate, C. Neal and Stacia L. Haynie. 1994. "Building a Scientific Comparative Judicial Politics and Arousing the Dragons of Antiscientism." *Law & Society Review* 28: 377-394.
- Recommended reading:
  - Gerring, John. 2001. *Social Science Methodology: A Criterial Framework*. Cambridge: Cambridge University Press.
  - Gerring, John. 2007. *Case Study Research: Principles and Practices*. Cambridge: Cambridge University Press.
  - Van Evera, Stephen. 1997. *Guide to Methods for Students of Political Science*. Ithaca, NY: Cornell University Press.
  - Bennett, Andrew, and Alexander George. 2005. *Case Studies and Theory Development in the Social Sciences*. Cambridge, Mass.: MIT Press.
  - Brady, Henry, and David Collier, eds. 2004. *Rethinking Social Inquiry: Diverse Tools, Shared Standards*. Lanham: Rowman and Littlefield. (new edition in 2010)
  - King, Gary, Robert Keohane, and Sidney Verba. 1994. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton: Princeton University Press.

## WEEK 5 (Sep 23)

## **Theory 1: Why Build Courts? Political Origins of Judicial Power**

- Required:
  - Justin Crowe. 2012. *Building the Judiciary*. Princeton: Princeton University Press.
- Recommended:
  - Whittington, Keith. 2007. *Political Foundations of Judicial Supremacy*. Princeton: Princeton University Press.
  - Crowe, Justin. 2007. "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft." *Journal of Politics* 69(1): 73-87.
  - Clinton, "Game Theory, Legal History, and the Origins of Judicial Review" 38 *AJPS* 285 (1994)
  - Kahn, Ronald, and Ken I. Kersch, eds. 2006. *The Supreme Court and American Political Development*.
  - Gillman, Howard. 2002. "How Political Parties Can Use Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891." *APSR* 96: 511-524.
  - Gillman, Howard. 2008. "Courts and the Politics of Partisan Coalitions." In Whittington, Keleman, and Caldeira, eds. *The Oxford Handbook of Law and Politics* 644-662.
  - Landes, William M., and Richard A. Posner 1975. "The Independent Judiciary in and Interest-Group Perspective." *Journal of Law and Economics* 18(3): 875-901.

## **WEEK 6 (Sep 30)**

### **Alternative Explanations in Comparative Perspective**

- Required reading:
  - Trochev, Alexei. 2004. "Less Democracy, More Courts: The Puzzle of Judicial Review in Russia." *Law & Society Review* 38(3): 513-548
  - Finkel, Jodi. 2005. "Judicial Reform as Political Insurance" *Latin American Politics and Society*
  - Nunes, Rodrigo. 2010. "Politics without Insurance." *Comparative Politics*.
  - Ingram, Matthew C. 2012. "Crafting Courts in New Democracies." *Comparative Politics*
- Recommended:
  - Ginsburg, Tom. 2003. *Judicial Review in New Democracies*. Cambridge: Cambridge University Press. (all)
  - Data Exercise
    - Replicate Ginsburg analysis
  - Data Sources: review online materials for each of the following before class; we will discuss
    - World Justice Project: Rule of Law Index
    - Freedom House
    - Cignarelli and Richards data
    - Ginsburg and Elkins data, Comparative Constitutions Project
  - Ramseyer, J. Mark. 1994. "The Puzzling (In)Dependence of Courts." *Journal of Legal Studies* 23: 721-747.
  - Magalhães, Pedro. 1999. "The Politics of Judicial Reform in Eastern Europe." *Comparative Politics* 32(1): 43-62.
  - Finkel, Jodi. 2005. "Judicial Reform as Insurance Policy: Mexico in the 1990s." *Latin American Politics & Society* 46(4).
  - Finkel, Jodi. 2008. *Judicial Reform as Political Insurance*. Notre Dame, University of Notre Dame Press.
  - Trochev, Alexei. 2004. "Less Democracy, More Courts: The Puzzle of Judicial Review in Russia." *Law & Society Review* 38(3): 513-548

- See also references in Morris and Blake (2010) regarding corrosive effect of initial democratic openings
- Hirschl, Ran. 2000. "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions." *Law & Social Inquiry* 91.
- Popova, Maria. 2010. "Political Competition as an Obstacle to Judicial Independence: Evidence From Russia and Ukraine." *Comparative Political Studies* 43(10): 1202 –1229.
- Trochev, Alexei. 2010. "Meddling with Justice: Competitive Politics, Impunity, and Distrusted Courts in Post-Orange Ukraine." *Demokratizatsiya*: 122-147.
- Trochev, Alexei. 2008. *Judging Russia: The Constitutional Court in Russian Politics, 1990-2006*. New York: Cambridge University Press.
- Popova, Maria. 2012. *Politicized Justice in Emerging Democracies: Courts in Russia and Ukraine*. New York: Cambridge University Press.
- From literature on accountability institutions and corruption, see references in Stephen Morris and Charles Blake, *Corruption and Politics in Latin America* (2010), regarding corrosive effect of initial democratic openings
- Strategic Theories:
  - Knight, Jack, and Lee Epstein. 1996. "On the Struggle for Judicial Supremacy." *Law and Society Review* 30.
  - Hunter-Henin, Myriam. 2011. "Constitutional Developments and Human Rights in France: One Step Forward, Two Steps Back." *The International and Comparative Law Quarterly* 60(1) (Jan): 167-188.
  - Pozas-Loyo, Andrea, and Julio Rios-Figueroa. 2010.
  - Staton, Jeffrey K. 2010. *Judicial Power and Strategic Communication in Mexico*. Cambridge: CUP.
  - Negretto, G. TBA
  - Vanberg, G. TBA
  - Fabrinni. TBA
- Ideational Theories:
  - Hilbink, Lisa. 2007. "Politicising Law to Liberalise Politics." In Halliday et al.
  - Ingram, Matthew C. 2012. "Crafting Courts in New Democracies: Ideology and Judicial Council Reforms in Three Mexican States." *Comparative Politics* 44(4) (July): 439-458.
  - Hilbink, Lisa. 2012. "Origins of Positive Independence." *World Politics*
  - Woods 2008, Introduction and Ch.1
  - Woods and Hilbink 2009, Introduction to PRQ Symposium
  - Ingram, Matthew C. 2012. "Elections, Ideology, or Opposition? Assessing Competing Explanations of Judicial Spending in the Mexican States." *Journal of Law, Economics, and Organization* v.30 (advance publication online Jan. 31, 2012).
- Gloppen, Siri, Roberto Gargarella, and Elin Skaar, eds. 2004. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. London: Frank Cass.
- Hirschl, Ran. 2004. *Toward Juristocracy*. Cambridge, Harvard University Press.

## WEEK 7 (Oct 7)

### Theory 2: Activating Courts

- Required:
  - Epp, Charles. 1998. *Rights Revolutions: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.
  - McAdam, Doug, John McCarthy, and Mayer Zald. 1996. "Introduction." In McAdam, McCarthy, and Zald, eds. *Comparative Perspectives on Social Movements*. Cambridge: Cambridge University Press.
- Recommended:
  - Epstein, Lee. 1985. *Conservatives in Court*. Knoxville, TN: University of Tennessee Press. Ch. 1, 5, and 6
  - McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.



- Sarat, Austin, and Stuart Scheingold. 2006. *Cause Lawyers and Social Movements*. Stanford: Stanford Law and Politics.
- Dworkin, Ronald. 2007. "The Supreme Court Phalanx." *New York Review of Books*. Sept. 17, 2007.
- Teles, Steven. 2008. *The Rise of the Conservative Legal Movement*. Princeton: Princeton University Press: Introduction.
- Additional recommended reading:
  - McAdam, McCarthy, and Zald (1996)
    - And social movement literature in general
  - Mendez, Juan, Paulo Sergio Pinheiro, and Guillermo O'Donnell, eds. 1999. *The (Un)Rule of Law and the Underprivileged in Latin America*. South Bend: University of Notre Dame Press.
  - Carothers, Thomas. 1998. "The Rule of Law Revival." *Foreign Affairs* 77(2).
  - Carothers, Thomas. 2006. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington, D.C.: Carnegie Endowment for International Peace.
  - Carothers, Thomas. 2007. "The 'Sequencing' Fallacy." *Journal of Democracy* 18(1).

## **WEEK 8 (Oct 14)**

### **Theory 3: Decision Making I - Legal and Attitudinal Models**

- Required:
  - Gibson, James. 1983. "From simplicity to complexity: The development of theory in the study of judicial behavior." *Political Behavior* 5(1), pp 7-49.
  - Segal and Spaeth. 2002:
    - ch1 (1-43); ch2 (44-85); ch6 (223-278); and ch7 (279-311)
  - Segal and Spaeth. 1996. "The Influence of Stare Decisis on the Votes of U.S. Supreme Court Justices." *AJPS* 40: 971-1003.
  - Richard Brisbin. 1996. Slaying the Dragon: Segal, Spaeth, and the Function of Law in Supreme Court Decision Making." *AJPS* 40: 1004-15
  - Jack Knight and Lee Epstein. 1996. "The Norm of Stare Decisis." *AJPS* 40: 1018-35
  - Brenner, Saul and Marc Stier. 1996. "Retesting Segal and Spaeth's Stare Decisis Model." *AJPS* 40: 1036-1048.
  - Donald Songer and Stefanie Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *AJPS* 40: 1049-63
  - Segal, Jeffrey A. and Harold J. Spaeth. 1996. "Norms, Dragons, and Stare Decisis: A Response." *AJPS* 40:1064-1082.
  - Richards and Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *96 APSR* 96: 305-320.
- Recommended:
  - Tom Clark (TBA)
  - Annual Review piece by Charles Cameron and Nolan McCarty
  - Review Shapiro (1980), Ch. 3
  - Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.
  - Stumpf, Harry P. 1998. *American Judicial Politics*. 2<sup>nd</sup> ed. New Jersey: Prentice-Hall, Inc. Ch. 1-2.
  - Judges on Judging

## **WEEK 9 (Oct 21) Attitudinal Model, cont.**

- Required:
  - Segal and Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. pp. 86-97, 312-326.
  - Sunstein, Cass, David Schkade, and Lisa Ellman. 2004. "Ideological Voting on Federal Courts of Appeal: A Preliminary Investigation." *Virginia Law Review* 90. (first half only)
  - Amaral-Garcia, Sofia, Nuno Garoupa, and Veronica Grembi. 2007. "Judicial Independence and Party Politics in the Kelsenian Constitutional Courts: The Case of Portugal" (working paper; read through p.22, including Table 1; published version appeared in *Journal of Empirical Legal Studies* 6(2), June 2009, but is missing some of the tables)
  - Data exercise
- Recommended reading
  - Posner, Richard. 2008. *How Judges Think*. Cambridge: Harvard University Press.
  - Sunstein, Cass, David Schkade, Lisa Ellman, and Andres Sawicki. 2005. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, D.C.: The Brookings Institution.
  - Selection from Woods/Hilbink symposium in PRQ 2009

## **WEEK 10 (Oct 28) Strategic Model**

- Required:
  - Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press. (all; skim Ch2 and Ch3)
- Recommended
  - Review Ginsburg, Ch. 3 and 4 (pp. 65-105)
  - Review Segal and Spaeth, 86-114; 326-351
  - Ríos-Figueroa, Julio. 2007. "Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002." *Latin American Politics & Society* 49(1).
  - Kapiszewski, Diana. 2011. "Tactical Balancing". *Law & Society Review*
  - Segal and Spaeth. 2002. pp. 97-109, 326-348. ("Rational Choice Model")
  - Eskridge, William N., Jr. 1991. "Reneging on History? Playing the Court/Congress/President Civil Rights Game." *California Law Review* 79.
  - Bonneau, Chris, Tom Hammond, Forrest Maltzman, and Paul Wahlbeck. 2007. "Who Controls the Law? The Majority Opinion Author, the Median Justice, and the Status Quo on the United States Supreme Court." *American Journal of Political Science* 51(October): 890-905.
  - Crawford Greenburg, Jan. 2008. "Change of Heart." In Jan Crawford Greenburg. *Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court*. New York: Penguin. Ch. 6 (pp. 139-163) (E-Reserve)

## **WEEK 11 (Nov. 4)**

### **Public Opinion, Institutional Legitimacy, and Legal Influence**

- Required:
  - Gibson, James, and Gregory Caldeira. 1995. "The Legitimacy of Transnational Legal Institutions." *AJPS*
  - Gibson, James, Gregory Caldeira, and Vaness Bayrd. 1998. "On the Legitimacy of National High Courts." *APSR* 92(2)
  - Clark, Tom. 2009. "Separation of Powers, Court Curbing, and Judicial Legitimacy." *AJPS*

- Staton, Jeffrey K. 2006. "Constitutional Review and Selective Promotion of Cases." *AJPS*.
- Recommended:
  - Marshall, Tom. 1989. *Public Opinion and the Supreme Court*. Boston: Unwin Hyman. (Esp. ch.4; cited in Rosenberg, 13)
  - Bybee, Keith
  - Vanberg, Georg

Alternative topics in this section of the course:

- Social background theory
- Influence of amici curiae (e.g., Paul Collins)

## **Week 12 (Nov 11)**

### **Theory 4: Impact - Do the Courts Matter? (Part 1)**

- Required:
  - Gerald Rosenberg, *The Hollow Hope* (second edition)
  - Neal Devins, "Judicial Matters" (review of *The Hollow Hope*, first edition)
- Recommended:
  - Michael McCann, "Causal versus Constitutive Explanations"
  - Michael Klarman, "*Brown and Lawrence (and Goodridge)*"

## **Week 13 (Nov. 18)**

### **Do the Courts Matter? (Part 2)**

- Required:
  - Galanter, Marc. "Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9: 95-160.
  - Kapiszewski, Diana, and Matthew T. Taylor. 2012. "Compliance: Conceptualizing, Measuring, and Explaining Adherence to Judicial Rulings." *Law & Social Inquiry*.
  - Wilson, Bruce M. 2005. "Changing Dynamics: The Political Impact of Costa Rica's Constitutional Court." In Rachel Sieder, Line Schjolden, and Alan Angell, eds. *The Judicialization of Politics in Latin America*. New York: Palgrave MacMillan, pp. 47-65.
  - Epp, Charles. 2008. "Law as an Instrument of Social Reform." In Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, eds. *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press.
- Recommended:
  - McCann, Michael. 1994. *Rights at Work*.
  - Ellickson, Robert. *Order without Law: How Neighbors Settle Disputes*. Cambridge: Harvard University Press, 1991.
  - Hirschl, Ran. 2004. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Cambridge: Harvard University Press. pp. 100-223 (Ch. 4-6).
  - Mahoney, Paul. 2001. "The Common Law and Economic Growth: Hayek might be right." *The Journal of Legal Studies* 30: 503-525.
  - Note: Connect to broader debates on corruption (e.g., conclusion from Morris and Blake?)

## **WEEK 14 (Nov. 25)**

### **No Class (Thanksgiving week)**

## WEEK 15 (Dec. 2)

### New areas of research (substantive and methodological)

- Moving down and out
  - Comparative and international
  - Subnational and supranational institutions
  - Non-judicial legal institutions (police, family law, civil litigation, ombuds offices, etc.)
- Measuring attitudes and ideal points
  - Martin and Quinn
  - Judicial Common Space
- Measuring judicial independence
  - Linzer and Staton
- Network analysis and the law
  - Network analysis of amici curiae (e.g., Janet Box-Steffensmeier)
  - Network influence (e.g., James Fowler)
  - Legal and judicial networks (e.g., Daniel Katz)
  - Network influence and attitude formation (e.g., Ingram 2012)
- Spatial analysis and the law
  - Diffusion of judicial independence (Darmofal and Randazzo)

## WEEK 16 (Dec. 9)

No class: mock comp distributed by today

**\*\*\* MOCK COMPS DUE BY END OF WEEK \*\*\***

### Additional recommended reading:

- Domingo, Pilar. 2000. "The Politics of the Supreme Court in Mexico." *Journal of Latin American Studies* 32: 705-735.
- Russell, Peter, and David M. O'Brien, eds. *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*. Charlottesville: University of Virginia Press.
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96(2).
- Helmke, Gretchen. 2004. *Courts Under Constraints*. Cambridge: Cambridge University Press.
- Chavez, Rebecca Bill. 2004. *Rule of Law in Nascent Democracies: Judicial Reform in Argentina*. Stanford: Stanford University Press.
- Ríos-Figueroa, Julio. 2006. *Judicial Independence: Definition, Measurement, and Its Effects on Corruption. An Analysis of Latin America*. Doctoral Dissertation in Political Science at New York University.
- Iaryczower, Matías, Pablo T. Spiller, and Mariano Tommasi. 2002. "Judicial Independence in Unstable Environments: Argentina 1935-1998." *American Journal of Political Science* 46: 699-716.
- Staton, Jeffrey K. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50: 98-112.
- Staton, Jeffrey K. 2007. "Lobbying for Judicial Reform: The Role of the Mexican Supreme Court in Institutional Selection." In Wayne A. Cornelius and David A. Shirk, eds. *Reforming the Administration of Justice in Mexico*. ch. 12, pp. 273-298. (E-Reserve)

- Iaryczower, Spiller, and Tommasi. 2006. "Judicial Lobbying: The Politics of Labor Law Constitutional Interpretation." *American Political Science Review* 100(1). (E-Reserve)
- Tate, C. Neal. 1997. "Courts and the Breakdown and Re-creation of Philippine Democracy: Evidence from the Supreme Court's Agenda." *International Social Science Journal* 49(2).
- Magaloni, Beatriz, and Arianna Sanchez. 2006. "An Authoritarian Enclave? The Supreme Court in Mexico's Emerging Democracy." Paper prepared for 2006 meeting of APSA.
- Moustafa, Tamir. 2007. *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*. Cambridge: CUP.
- Magaloni, Beatriz. 2008. "Enforcing the Autocratic Political Order and the Role of Courts: The Case of Mexico." In Tom Ginsburg and Tamir Moustafa, eds. *Rule by Law: The Politics of Courts in Authoritarian Regimes*. Cambridge: Cambridge University Press
- Nunes, Rodrigo. 2010. "Ideational Origins of Judicial Activism in Colombia." *Latin American Politics and Society*.

### **Additional Resources:**

- (1) Supreme Court Blog: [www.scotusblog.com](http://www.scotusblog.com)
- (2) Constitutional Law Professors' Blog: <http://lawprofessors.typepad.com/conlaw>
- (3) Empirical Legal Studies (ELS) Blog: [www.elsblog.org](http://www.elsblog.org)
- (4) Law & Courts Section of American Political Science Association: <http://www.law.nyu.edu/lawcourts>
- (5) Law & Society Association (LSA): <http://www.lawandsociety.org>
- (6) Comparative Law Society: <http://www.iuscomp.org>
- (7) American Society of International Law: <http://www.asil.org/index.html>
- (8) Globalex legal research site (NYU): <http://www.nyulawglobal.org/Globalex/>
- (9) Jurist legal research site (U. of Pittsburgh): <http://jurist.org/>
- (10) World Treaty Index: <http://worldtreatyindex.com>
- (11) Computational Legal Studies: <http://computationallegalstudies.com>
- (12) Some relevant journals:
  - a. International Journal of Constitutional Law
  - b. Journal of Empirical Legal Studies
  - c. Journal of Law, Economics, and Organization
  - d. Journal of Legal Studies
  - e. Judicature
  - f. Justice System Journal
  - g. Law and Social Inquiry
  - h. Law and Society Review