

PSC 5321 / Seminar in Public Law: Judicial Politics

Spring 2013

Room: Bur 309
Professor: Curt Nichols
Office: Bur 303
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Meeting Time: M 2:30-5:15

Office Hours: TBD
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Overview: The Public Law field of study is diverse and growing. It is grounded in U.S. Constitutional Law / Interpretation and includes the study of the Philosophy of Law / Jurisprudence and Constitutional Theory in its sub-fields. However, this seminar focuses on none of these things; rather, it draws material from three other sub-fields to study Public Law at the intersection of Judicial Politics, American Constitutional History, and Comparative Law and Constitutionalism. The seminar also seeks to deepen participants understanding of the methodology of social science research, including project design.

Class Discussion: This seminar is emphatically not a lecture class. Everyone is expected to come to class prepared to fully participate in the discussion of the readings. Each week a different member of the class will help lead discussion.

Course Requirements: Weekly response papers (500 words, wks 2,3, 13 & six of 6-8,10,11,14,15). Short paper: apply comparative theory to the American case (6-8 pages; due Feb 14). Short paper: literature review (6-8 pages; due Mar 22). Long paper: seminar paper or lit review and project proposal (appropriate length, due May xx).

Books to buy, borrow, or otherwise get your hands on:

- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.
- Ginsburg, Tom. 2003. *Judicial Review in New Democracies*. Cambridge University Press.
- Magliocca, Gerard N. 2007. *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes*. The University Press of Kansas.
- McCloskey, Robert G. any addition. *The American Supreme Court*. U of Chicago Press.
- Perry, H.W. Jr. 1991. *Deciding to Decide: Agenda Setting in the US Supreme Court*, Cambridge: Harvard U Press.
- Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* U of Chicago Press.
- Segal, Jeffery A. and Harold J. Spaeth. 2002. *The Supreme Court and The Attitudinal Model Revisited*. Cambridge University Press
- Whittington, Keith. 2008. *The Political Foundations of Judicial Supremacy*. Princeton.

Grading: 100-92% = A; 91.95-90% = A-; 89.95-88% = B+; 87.95-82% =B; 81.95-80% =B-; <80% = C. Long paper 50% grade. Short papers 30% grade. Participation (incl. seminar ldrship and weekly response) 20% grade.

Course Outline:

(You are responsible for the following material by the date listed.)

Week One: Jan 14 ~ Intro: Judicial Politics and the Public Law sub-field.

Princeton University, “Reading List for Ph.D. General Examination in Public Law”
@ http://www.princeton.edu/~kewhitt/public_law_list.pdf.

Pritchett, C. Herman. 1968. “Public Law and Judicial Behavior” *The Journal of Politics*, Vol. 30, (2): 480-509.

Shapiro, Martin. 1993. “Public Law and Judicial Politics” in *Political Science: The State of the Discipline II*. ed. Ada W. Finifter. Washington D.C.: American Political Science Association: 365-382.

Week Two: Jan 21 ~ MLK Day / RESCHEDULE CLASS ~ hold T, W, Th, or F

Comparative Law and Constitutionalism I / Theories of Constitutionalization

Ginsburg, Tom. 2003. *Judicial Review in New Democracies*. Cambridge University Press.

Introduce Short Paper Project #1

Week Three: Jan 28 ~ Comparative Law and Constitutionalism II

Hirschl, Ran. 2000. “The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions,” *Law and Social Inquiry* 25.

North, Douglass and Barry Weingast 1989. “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England.” *Journal of Economic History* 49.

Moustafa, Tamir 2003. “Law Versus the State: The Judicialization of Politics in Egypt.” *Law and Social Inquiry* 28: 883-930.

Sweet, Stone. 1999. “Judicialization and the Construction of Governance” *Comparative Political Studies*, 32: 147-184.

Week Four: Feb 4 Comparative Law and Constitutionalism III

Short Paper Project Meeting Day.

Week Five: Feb 11 ~ Constitutional History I / Classic Rendition (Dualism)

McCloskey, Robert G. any addition. *The American Supreme Court*. U of Chicago Press.
Lit review essay assigned.

Short paper #1 due Feb 14th, 5pm.

Week Six: Feb 18 ~ Constitutional History II / the Regime Politics Approach

Required:

Dahl, Robert. 1957. Decision-Making in a Democracy: The Supreme Court as a National Policy Maker." *Journal of Public Law*. 6: 279-295.

Gillman, Howard. 2002. "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891," *APSR* 96: 511-524.

Graber, Mark A. 1993. "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development*.

-----, 1998. "Federalist or Friends of Adams: The Marshall Court and Party Politics," *Studies in American Political Development* 12.

Whittington, Keith. "Once More Unto the Breach: Post-Behavioralist Approaches to Judicial Politics," *Law and Social Inquiry* 25:2 (Spring 2000): 601-634.

Recommended:

Gillman, Howard. 1997. "The Collapse of Constitutional Originalism and the Rise of the Notion of the 'Living Constitution' in the Course of American State-Building," *Studies in American Political Development* (1997).

Graber, Mark A. 2000. "The Jacksonian Origins of Chase Court Activism" *Journal of Supreme Court History*.

Week Seven: Feb 25 Constitutional History III / the Regime Politics Approach (duex)

Whittington, Keith. 2008. *The Political Foundations of Judicial Supremacy*. Princeton.

Week Eight: Mar 4 Constitutional History IV / Courts and Realignment

Burnham, Walter Dean 1991. "Critical Realignment: Dead or Alive?" In *The End of Realignment?: Interpreting American Electoral Eras*. ed. Byron Shafer. Madison: UW Press: 101-140.

Funston, Richard (1975) "The Supreme Court and Critical Elections" *APSR* 69: 795-811.

Lasser, William 1985. "The SC in Periods of Critical Realignment" *JOP* 47(4): 1174-1187.

Nichols, Curt, Dave Bridge, and Adam Carrington. "Party Building and Congressional Attacks on the Supreme Court 1955- 1984" draft.

Week Nine: Mar 11 Spring Break / NO CLASS

Week Ten: Mar 18 Constitutional History V/ the Development of Political Regimes

Magliocca, Gerard N. 2007. *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes*. The University Press of Kansas.

Short paper #2 due Mar 21st 5pm.

Week Eleven: Mar 25 ~ Judicial Politics I / Strategic Behavior

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.

Vanberg, Georg 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *AJPS* 45: 346-361.

Week Twelve: Apr 1 ~ Easter / NO CLASS

Week Thirteen: Apr 8 ~ Judicial Politics II / Not-so-Strategic Behavior

Perry, H.W. Jr. 1991. *Deciding to Decide: Agenda Setting in the US Supreme Court*, Cambridge: Harvard U Press.

Week Fourteen: Apr 15 ~ Judicial Politics III / the Attitudinal Model

Segal, Jeffery A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices," *APSR*.

Segal, Jeffery A. and Harold J. Spaeth. 2002. *The Supreme Court and The Attitudinal Model Revisited*. Cambridge University Press

Week Fifteen: Apr 22 ~ Judicial Politics IV / Instrument of Social Change?

Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* U of Chicago Press.

Week Sixteen: Apr 29 ~ End of semester meeting, poolside, chez Nichols.

Long paper project due May xx 5pm.