

OHIO STATE UNIVERSITY
Department of Political Science

Political Science 894
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COMPARATIVE JUDICIAL POLITICS

Courts and judges perform central roles on the stage of American politics and public policy. We know a great deal about what courts and judges have said and done in the United States. We political scientists who study courts in the United States grapple with such issues as: What impact do courts have on society? How do judges make decisions? Why do people go to court, or more often, why do they fail to use the law? Why do some decisions have significant consequences when others appear to make no difference at all? We know much less, however, about what courts do and say, with what if any consequence, in other countries. Our ignorance of courts outside of the United States was bad enough twenty years ago, when only a handful of constitutional courts scattered across the globe made politically important decisions. This ignorance looms large today as constitutional and other national and transnational high courts make earth-shattering decisions on nearly a daily basis. Nearly every polity in the second and third waves of democratization has adopted a politically powerful high court.

This seminar has several purposes. First, I hope to introduce you to the "state of the art," such as it is at this early date, in studies of comparative judicial politics. Second, we will touch upon a series of specialized topics, major nodes of controversy in the subfield. Third, I want each of you to choose a country or trans-national organization and, as we move through the material, and amass data or information on the critical features of courts and the legal system, especially the constitutional or high court, on "your country." This on-going research should lead to a substantial final paper and serve as an impetus to your contributions to our twice-weekly collective deliberations. Fourth, each of you should prepare a brief set of "reading notes" for each of the readings. Preparing these notes will serve to imprint the materials on your mind, help to launch discussion, and help you when it comes to time to prepare for examinations.

Grading: I expect all students enrolled in the seminar to attend all meetings and to arrive in class prepared to ask and field questions and to discuss the current week's

readings in the same manner as any good political scientist. Early in the term each student should choose your country or supra-national entity and begin to delve into it in more detail. The final paper (25 percent), the reading notes (25 percent), participation (25 percent) in and attendance at (25 percent) the seminar will serve as the bases of your grade in this course.

Here is a list of the readings for the course, organized by topical themes.

1. Constitutional Courts as Political Institutions

Stone Sweet, Alec. 2000. *Governing With Judges: Constitutional Politics in Europe*. New York: Oxford University Press. Focuses on the constitutional courts in Germany, France, Spain, and Italy and their interaction with other institutions; and the European Court of Justice.

Tsebelis, George. Forthcoming. Veto Players and Institutional Analysis. *Governance*. This is an overview with a discussion of courts as veto players.

2. Overviews of Law and Politics in Four Democracies

Kritzer, Herbert M. 1996. Courts, Justice, and Politics in England. In Herbert Jacob, ed., *Courts, Law & Politics in Comparative Perspective*. New Haven: Yale University Press. Pp. 81-176.

Provine, Doris Marie. 1996. Courts in the Political Process in France. In Herbert Jacob, ed., *Courts, Law & Politics in Comparative Perspective*. New Haven: Yale University Press. Pp. 177-248.

Blankenburg, Erhard. 1996. Changes in Political Regimes and Continuity of the Rule of Law in Germany. In Herbert Jacob, ed., *Courts, Law & Politics in Comparative Perspective*. New Haven: Yale University Press. Pp. 249-314.

Sanders, Joseph. 1996. Courts and Law in Japan. In Herbert Jacob, ed., *Courts, Law & Politics in Comparative Perspective*. New Haven: Yale University Press. Pp. 315-400.

3. Recruitment, Training, and Practices of the Bar

Abel, Richard L. 1995. England and Wales: A Comparison of the Professional Projects of Barristers and Solicitors. In Richard L. Abel and Philip S. C. Lewis (eds.), *Lawyers in Society: An Overview*. Berkeley: University of California

- Press. Pp. 39-91.
- Blankenburg, Erhard, and Ulrike Schultz. 1995. German Advocates: A Highly Regulated Profession. In Richard L. Abel and Philip S. C. Lewis (eds.), *Lawyers in Society: An Overview*. Berkeley: University of California Press. Pp. 92-127.
- Rokumoto, Kahei. 1995. The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization? In Richard L. Abel and Philip S. C. Lewis (eds.), *Lawyers in Society: An Overview*. Berkeley: University of California Press. Pp. 128-167.
- Huyse, Luc. 1995. Legal Experts in Belgium. Richard L. Abel and Philip S. C. Lewis (eds.), *Lawyers in Society: An Overview*. Berkeley: University of California Press. Pp. 168-200.
- Perdomo, Rogelio Perez. 1995. The Venezuelan Legal Profession: Lawyers in an Inegalitarian Society. Richard L. Abel and Philip S. C. Lewis (eds.), *Lawyers in Society: An Overview*. Berkeley: University of California Press. Pp. 201-220.
- Mestitz, Anna, Patrizia Pederzoli. 1995. Training the Legal Profession in Italy, France, and Germany. In C. Neal Tate and Torbjorn Vallinder (eds.), *The Global Expansion of Judicial Power*. New York: New York University Press. Pp. 155-179.
- Glendon, Mary Ann, Michael Wallace Gordon, and Christopher Osakwe. 1985. *Comparative Legal Traditions*. St. Paul, Minn.: West Pub. Co., 1985. Pp. 40-166.

4. Varieties of Law: Common Law, Civil Law, and Others

- Shapiro, Martin M. 1981. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press. Pp. 65-125 (English law), 126-156 (civil law).
- David, Rene, and John E. C. Brierly. 1978. *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*. 2nd edition. New York: Free Press Pp. 17-30, 31-142, 285-367. This is the authoritative treatise on the differences and similarities between and among types of law.
- Merryman, John Henry. 1984. *The Civil Law Tradition*. Stanford: Stanford University Press (short, highly recommended treatment).
- La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny. 1998. Law and Finance. *Journal of Political Economy* 106:1113-1156 (suggested; assesses effects of legal systems).
- La Porta, Rafael, F. Lopez-de-Silanes, Andrei Schleifer, and Robert Vishny. 1999. The Quality of Government. *Journal of Law, Economics and Organization* 15:229-279 (suggested; assesses effects of legal systems).

5. Structures of Judicial and Constitutional Review: Continental, American, and Hybrid Models

Brewer-Carias, Allan R. 1989. *Judicial Review in Comparative Perspective*. New York: Cambridge University Press.

See Arne Mavcik's website, <http://www.sigov.si/us/eus-ds.html#CourtNet>, for a wealth of data on constitutional courts, links to relevant websites, and Mavcik's own classifications of types of courts and their powers.

6. Judicial Independence: Conceptualization, Measurement, and Consequences

Larkins, Christopher. 1996. Judicial Independence and Democratization: A Theoretical and Conceptual Analysis. *American Journal of Comparative Law* 44:605-626.

Ramseyer, J. Mark, and Eric B. Rasmussen. 1997. Judicial Independence in a Civil Law Regime: The Evidence from Japan. *Journal of Law, Economics, and Organization* 13:341-355.

Ramseyer, J. Mark. 1994. The Puzzling Independence of Courts: A Comparative Approach. *Journal of Legal Studies* 23:721-747.

Verner, Joel. 1984. The Independence of Supreme Courts in Latin America: A Review of the Literature. *Journal of Latin American Studies* 15:463-506.

Rosenn, Keith S. 1987. The Protection of Judicial Independence in Latin America. *Inter-American Law Review* 19:1-35.

Helmke, Gretchen. 1999. Judicial Decision-Making and Strategic Defection: Court-Executive Relations in Argentina, 1976-1995. Unpublished manuscript, Department of Political Science, University of Chicago.

Salzberger, Eli, and Paul Fenn. 1999. Judicial Independence: Some Evidence from the English Court of Appeal. *Journal of Law and Economics* XLII:831-847.

Ramseyer, J. Mark, and Frances Rosenbluth. 1996. *Japan's Political Marketplace*. New Haven: Yale University Press. Chapters 5 and 6.

7. Agenda-Control in High Courts and Constitutional Courts

Strasser, Sarah E. 1995/1996. Evolution and Effort: Docket Control & Preliminary References in the European Court of Justice. *Columbia Journal of European Law* 2:49-105.

Flemming, Roy, and Glen Krutz. 1999. Agenda-Setting in the Supreme Court of Canada. Paper presented at Annual Meeting of Conference Group on Scientific Study of Judicial Politics, College Station, Texas.

Atkins, Burton M. 1991. Party Capability Theory as an Explanation for Intervention Behavior in the English Court of Appeal. *American Journal of Political Science* 35:881-903.

Kommers, Donald P. 1997. *The Constitutional Jurisprudence of the Federal Republic of Germany*. 2nd edition. Durham: Duke University Press. Pp. 3-29.

8. Relationships Between Courts, Executives, and Legislatures in Parliamentary Democracies

Lijphart, Arend. 1999. *Patterns of Democracy: Governmental Form and Performance in Thirty-Six Countries*. New Haven: Yale University Press. Selected pages.

Alivizatos, Nicos. 1995. "Judges as Veto Players." In *Parliaments and Majority Rule in Western Europe*, ed. Herbert Doring. New York: St. Martin's Press. Pp. 566-591.

Vanberg, George. 1998. Abstract Judicial Review, Legislative Bargaining, and Policy Compromise. *Journal of Theoretical Politics* 10:299-326.

Stone Sweet, Alec. 1998. Rules, Dispute Resolution, and Strategic Behavior. *Journal of Theoretical Politics* 10:327-338 (response to Vanberg; see also Vanberg's rejoinder).

Larkins, Christopher. 1998. The Judiciary and Delegative Democracy in Argentina. *Comparative Politics* 30:423-442.

9. Legal Culture, Political Culture, and Rights

Gibson, James L., and Gregory A. Caldeira. 1996. The Legal Cultures of Europe. *Law and Society Review* 30: 55-85.

Sniderman, Paul M., Joseph F. Fletcher, Peter H. Russell, and Philip E. Tetlock. 1996. *The Class of Rights: Liberty, Equality, and Legitimacy in Pluralist Democracy*. New Haven: Yale University Press (selections).

Gibson, James, Gregory Caldeira, and Vanessa Baird. 1998. On the Legitimacy of National High Courts. *American Political Science Review* 92:343-358.

Gibson's paper on a sober second thought in Russia.

Gibson-Gouws in *APSR* (1999) on the Truth and Reconciliation Commission.

Caldeira-Gibson in *APSR* on the legitimacy of the European Court of Justice.

10. Litigation and the Functions of Courts

Toharia, Jose Juan. 1975. Judicial Independence in an Authoritarian Regime. *Law & Society Review* 1975:475-496.

- Giles, Micheal W., and Thomas D. Lancaster. 1989. Social Development and Demand on the Courts: The Case of Spain Revisited. *American Political Science Review* 83:817-834.
- Haynes, Stacia L. 1995. Resource Inequalities and Regional Variation in Litigation Outcomes in the Philippine Supreme Court, 1916-1986. *Political Research Quarterly* 48:371-380.
- Haynes, Stacia L. 1994. Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court. *Journal of Politics* 56:752-772.
- Tate, C. Neal, and Stacia L. Haynie. 1993. Authoritarianism and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court. *Law & Society Review* 27:201-234.
- Gillman, Howard. 1994. On Constructing a Science of Comparative Judicial Politics: Comment on Tate and Haynie's 'Authoritarianism and the Functions of Courts'. *Law and Society Review* 28 (1994):901-922. See also Tate and Haynie's response to Gillman.

11. The Roles and Impact of Lawyers and Constitutions in Enforcing Rights

- Epp, Charles. 1998. *The Rights Revolution*. Chicago: The University of Chicago Press.
- Tate, C. Neal, and Torbjorn Vallinder. 1995. The Global Expansion of Judicial Power: The Judicialization of Politics. In C. Neal Tate and Torbjorn Vallinder (eds.), *The Global Expansion of Judicial Power*. New York: New York University. Pp. 1-10 (recommended).
- Tate, C. Neal. 1995. Why the Expansion of Judicial Power? In C. Neal Tate and Torbjorn Vallinder (eds.), *The Global Expansion of Judicial Power*. New York: New York University. Pp. 27-38 (recommended).

12. Organized Interests, Access, and Litigation

- Harlow, Carol. 1992. Toward a Theory of Access to the European Court of Justice. *Yearbook of European Law* 12:213-xxx.
- Epp, Charles. 1998. *The Rights Revolution*. Chicago: The University of Chicago Press (*passim* on the role of organized interests).

13. Transnational Courts: The European Court of Justice

- Weiler, Joseph H. H. 1991. The Transformation of Europe. *Yale Law Journal* 100:2403-2483.

- Mattli, Walter, and Anne-Marie Slaughter. 1998. Revisiting the European Court of Justice. *International Organization* 52:177-210.
- Garrett, Geoffrey. 1995. The Politics of Legal Integration in the European Union. *International Organization* 49:171-1181.
- Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schulz. 1998. The European Court of Justice, National Governments, and Legal Integration in the European Union. *International Organization* 52:149-176.
- Stone-Sweet, Alec, and Thomas L. Brunell. 1998. Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community. *American Political Science Review* 92:63-82.
- Mattli, Walter, and Anne-Marie Slaughter. 1999. The Role of National Courts in the Process of European Integration: Accounting for Judicial Preferences and Constraints. In Anne-Marie Slaughter, Alec Stone Sweet, and J. H. H. Weiler (eds.), *The European Court and National Courts—Doctrine and Jurisprudence: Legal Change and Its Social Context*. Oxford: Hart Publishing. Pp. 253-277.
- Weiler, J. H. H. 1999. *The Constitution of Europe*. New York: Cambridge University Press (recommended; it collects his most important writing on the ECJ over the last decade or so).
- Kenney, Sally. 1998-1999. The Members of the Court of Justice of the European Communities. *Columbia Journal of European Law* 5:101-xxx.

14. Judicial Politics in Western Europe

- Vanberg, Georg. 1999. *The Politics of Constitutional Review: Constitutional Court and Parliament in Germany*. Ph.D. Dissertation, Political Science, University of Rochester.
- Kommers, Donald P. 1997. *The Constitutional Jurisprudence of the Federal Republic of Germany*. 2nd edition. Durham: Duke University Press. Read Pp. 30-59 and re-read 3-29. Read also relevant cases.
- Kommers, Donald P. 1976. *Judicial Politics in West Germany*. Beverly Hills: Sage Publications (recommended; dated, of course, but still the best treatment of the Federal Constitutional Court as an institution).
- Stone, Alec. 1995. *The Birth of Judicial Politics in France*. New York: Oxford University Press (recommended).
- Volcansek, Mary. 1999. *Constitutional Politics in Italy: The Constitutional Court*. New York: St. Martin's Press (recommended).
- Guarneri, Carlo, and Pedro Maglaes. Forthcoming. Democratic Consolidation, Judicial Reform, and the Judicialization of Politics in Southern Europe. In Richard Gunther, P. Nikiforos Diamandouros, and Gianfranco Pasquino (eds.), *The Changing Functions of the State in Southern Europe*. Baltimore: Johns Hopkins University Press (recommended).

14. **Judicial Politics, Constitutionalism, and the Rule of Law in Eastern Europe**

- Brzezinski, Mark. 1998. *The Struggle for Constitutionalism in Poland*. New York: St. Martin's Press, Oxford (selected pages).
- Schwartz, Herman. 1998. Eastern Europe's Constitutional Courts. 9 *Journal of Democracy* 9:100-114.
- Magalhaes, Pedro C. 1999. The Politics of Judicial Reform in Eastern Europe. 32 *Comparative Politics* 43-62.
- Schwartz, Herman. 2000. *The Struggle for Constitutional Justice in Post-Communist Europe*. Chicago: University of Chicago Press (recommended).

15. **Judicial Politics and Judicial Review in the Middle and Near East**

- Brown, Nathan. 1998. Judicial Review in the Arab World. *Journal of Democracy* 9:85-99.
- Brown, Nathan. 1997. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. Cambridge: Cambridge University Press (recommended).
- Newburg, Paula R. 1995. *Judging the State: Courts of Constitutional Politics in Pakistan*. London: Cambridge University Press (recommended).
- Epp, Charles. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press. Chapters on Indian law.