

Political Science 716
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JUDICIAL DECISION MAKING

In the study of judicial politics, the issue of greatest interest has been how to explain judicial decisions. This course is concerned with that issue. We will consider a range of theoretical arguments and empirical evidence, all concerned with the possible determinants of judges' choices as decision makers. Inevitably, much of the scholarship on judicial behavior is narrow in its focus. But all this scholarship relates to the broad issue of explanation that is our concern. One of our tasks throughout the course will be to make the connection between specific inquiries and that broad issue.

For complex historical reasons, for a long time the field of judicial politics was largely isolated from the mainstream of scholarship in American politics. That isolation is breaking down, so there are closer links between the study of judicial behavior and the study of decision making in the other branches of government. Especially for those students whose primary interests concern the other branches, one goal should be to think systematically about similarities and differences in decision making across branches. To the extent that the determinants of behavior for Supreme Court justices differ from those for members of Congress, for example, what characteristics of the two organizations explain those differences?

Readings for the course will come from the usual variety of sources. The readings are listed below by topic and class day. There might be a few additions and deletions as we go along.

Among the readings are three books, which have been ordered by SBX. In the schedule of readings, these books will be designated by the names of their authors.

Jeffrey A. Segal and Harold J. Spaeth, The Supreme Court and the Attitudinal Model Revisited (2002)

Lee Epstein and Jack Knight, The Choices Justices Make (1998)

Thomas G. Hansford and James F. Spriggs II, The Politics of Precedent on the U.S. Supreme Court (2006)

On the syllabus, the names of several journals are abbreviated, as follows: AJPS (American Journal of Political Science), APSR (American Political Science Review), JOP (Journal of Politics), and PRQ (Political Research Quarterly).

Most of the articles to be read are available at one or more websites: JSTOR (<http://www.jstor.org/jstor/>), for articles in political science journals that are more than three years old) HEIN (<http://www.heinonline.org/HOL/Welcome>) for articles in law journals, and websites for specific journals on the library circulation system. I'll put articles and book chapters that aren't available from online sources in a file in the reading room.

Students who have limited familiarity with the judicial process may find it useful to consult a textbook on the courts generally, on the federal courts, or specifically on the Supreme Court. I can let you know about books that would be helpful in light of your current knowledge about the courts.

Student responsibilities for the class are as follows:

1. Class participation (20% of grade). Although I will be presenting a fair amount of material in class sessions, the success of those sessions depends heavily on the quality of our collective discussions. This portion of the grade will be based on students' contributions to those discussions.

2. Issue papers (40% of grade). During the quarter each student will write four short papers (approximately five double-spaced pages each) that analyze issues arising from the readings and class material on a topic. (By "topic" I mean the subject of one class session.) The paper on a topic will be due one week after we take up the topic in class. These papers can take any of several forms: a critique of an approach taken in the research on an issue (but not a critique of a specific reading), a sketch of a way to study an issue (but not a specific research design), a theoretical argument, or something else you find appropriate. You won't need to do additional reading to write your paper on a topic. These papers need not be highly polished, but they should reflect careful thinking and writing.

To protect you from having these papers bunch up at the end of the quarter, I've set some arbitrary deadlines. You must turn in at least one paper by January 24th, two by February 7th, three by February 21st, and all four by March 6th. (Since there is a week's lag between the topic on which you write and the due date, this means that you probably won't be writing on the last two topics, though you're welcome to read ahead so that you can write on one of those topics and still meet the last due date.)

3. Final papers (40% of grade). Students will write a longer paper of approximately fifteen to twenty double-spaced pages, due on March 11th. Let me suggest two possible types of papers, though you're welcome to suggest an alternative if you'd prefer a different type.

The first type is an analysis of a broad issue relating to judicial decision making. This type of paper could take one of the forms that I've suggested for the issue papers, but it would have greater breadth (by definition) and depth, and it would be based on extensive reading beyond the readings on the syllabus. To take some examples, the paper might be a critique of alternative theories or approaches to the study of judicial decision making; a discussion of the application of a body of theory (perhaps drawn from economics or psychology) to a set of issues in judicial behavior; a close examination of a specific issue, such as the impact of judges' race or gender on their choices; a comparison of decision making between two different types of courts; or a comparison of some aspect of judicial decision making with that aspect of decision making in another branch of government. As some of these examples suggest, students with primary

interests in other subfields of American politics might design a paper that makes use of their expertise and interest within those subfields to gain a better understanding of judicial decision making.

The second type of paper is actual research on judicial decision making. Because quarters are short, the research would have to be designed carefully so that it is practical to complete within the available time. But it is possible to carry out a significant project, especially if you can make use of existing bodies of data. (Various versions of the Supreme Court Database, compiled by Harold Spaeth, allow inquiries to a wide range of issues involving decision making on the Supreme Court. There are also databases on decisions of the federal courts of appeals and state supreme courts.) A small research project might stand on its own, or it might be a step in the development of a larger project.

Once you've formulated a tentative idea for the paper, write me a short memo describing what you have in mind. I'll then talk with you about the paper, and I'll ask you to write another short memo with a semifinal plan for the paper. Let me suggest that you get me your short memo no later than January 31st.

Schedule of Topics and Readings

I. Introduction to Judicial Decision Making (January 3rd)

No readings.

II. The Impact of Judges' Policy Preferences

A. The argument for the dominance of preferences (January 8th)

Segal and Spaeth, ch. 2 and pp. 86-97.
Epstein and Knight, ch. 2.

B. Evidence on the influence of preferences

1. The Supreme Court (January 10th)

C. Herman Pritchett, "Divisions of Opinion Among Justices of the U.S. Supreme Court, 1939-1941," American Political Science Review 35 (October 1941), 890-898.

David Danelski, "Values as Variables in Judicial Decision-Making," Vanderbilt Law Review 19 (1966), 721-740.

Segal and Spaeth, pp. 312-326.

Jeffrey A. Segal and Albert Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices," APSR 83 (June 1989), 557-565.

2. Lower courts (January 15th)

James L. Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," APSR 72 (September 1978), 911-924.

John T. Wold and Gregory A. Caldeira, "Perceptions of 'Routine' Decision-Making in Five California Courts of Appeals," Polity 13 (Winter 1980), 334-347.

Craig F. Emmert and Carol Ann Traut, "The California Supreme Court and the Death Penalty," American Politics Quarterly 22 (January 1994), 41-61.

Paul Brace, Laura Langer, and Melinda Gann Hall, "Measuring the Preferences of State Supreme Court Judges," JOP 62 (May 2000), 387-413.

C. Sources of policy preferences (January 17th)

C. Neal Tate, "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978," APSR 75 (June 1981), 355-367.

Donald R. Songer, Sue Davis, and Susan Haire, "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals." Journal of Politics 56 (May 1994), 425-439.

Donald R. Songer and Susan J. Tabrizi, "The Religious Right in Court: The Decision Making of Christian Evangelicals in State Supreme Courts," JOP 61 (May 1999), 507-526.

Nancy Scherer, "Blacks on the Bench," Political Science Quarterly 119 (Winter 2004-05), 655-675.

III. The Impact of Law

A. The argument for the importance of law (January 22nd)

Marc Stier and Saul Brenner, "Does Precedent Influence the Justices' Voting on the U.S. Supreme Court? A Theoretical Argument," Law & Courts, forthcoming.

Howard Gillman, "What's Law Got to Do with It? Judicial Behavioralists Test the 'Legal Model' of Judicial Decision Making," Law & Social Inquiry 26 (Spring 2001), 465-504.

Eileen Braman and Thomas E. Nelson, "Mechanism of Motivated Reasoning? Analogical Perception in Discrimination Disputes," AJPS 51 (October 2007), 940-956.

Hansford and Spriggs, chs. 1-2.

B. Evidence on the influence of law

1. The Supreme Court (January 24th)

Mark J. Richards and Herbert M. Kritzer, "Judicial Regimes in Supreme Court Decision Making," APSR 96 (June 2002), 305-320.

Robert M. Howard and Jeffrey A. Segal, "An Original Look at Originalism." Law and Society Review 36 (2002), 113-134.

Segal and Spaeth, pp. 287-310.
Hansford and Spriggs, chs. 3-8.

2. Lower courts (January 29th)

David E. Klein, Making Law in the United States Courts of Appeals (2002), ch. 4.

Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron, "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions," AJPS 38 (August 1994), 673-696.

Donald R. Songer, Martha Humphries Ginn, and Tammy Sarver, "Do Judges Follow the Law When There is No Fear of Reversal?" Justice System Journal 24 (2003), 137-161.

IV. Group Decision Making

A. The character of appellate courts as groups (January 31st)

Jonathan Matthew Cohen, Inside Appellate Courts, ch. 5 (2002).

Paul Brace and Melinda Gann Hall, "Integrated Models of Judicial Dissent," JOP 55 (November 1993), 914-935.

J. Woodford Howard, "On the Fluidity of Judicial Choice," APSR 62 (March 1968), 43-56.

Robert H. Dorff and Saul Brenner, "Conformity Voting on the United States Supreme Court," JOP 54 (August 1992), 762-775.

B. Strategy: theoretical perspectives (February 5th)

Epstein and Knight, chs. 1, 3-4.

Forrest Maltzman, James F. Spriggs II, and Paul J. Wahlbeck, Crafting Law on the Supreme Court: The Collegial Game (Cambridge University Press 2000), ch. 1.

C. Strategy: empirical evidence (February 7th)

Virginia A. Hettinger, Stefanie A. Lindquist, and Wendy L. Martinek, "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals," AJPS 48 (January 2004), 123-137.

Paul J. Wahlbeck, James F. Spriggs II, and Forrest Maltzman, "Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court," AJPS 42 (1998), 294-315.

Chris W. Bonneau, Thomas H. Hammond, Forrest Maltzman, and Paul J. Wahlbeck, "Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court," AJPS 51 (October 2007), 890-905.

V. Courts and Their Environments

A. Participants in litigation (February 12th)

Herbert M. Kritzer, "The Government Gorilla: Why Does Government Come Out Ahead in Appellate Courts?" in Herbert M. Kritzer and Susan Silbey, eds., In Litigation: Do the "Haves" Still Come Out Ahead? (Stanford University Press 2003), 342-370.

Timothy R. Johnson, Paul J. Wahlbeck, and James F. Spriggs II, "The Influence of Oral Arguments on the U.S. Supreme Court," APSR 100 (February 2006), 99-113.

Andrea McAtee and Kevin T. McGuire, "Lawyers, Justices, and Issue Salience: When and How do Legal Arguments Affect the Supreme Court?" Law & Society Review 41 (June 2007), 259-278.

Paul M. Collins Jr., "Lobbyists before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs," Political Research Quarterly 60 (March 2007), 55-70.

B. The other branches of government

1. Avoiding overrides of decisions (February 14th)

Bergara, Mario, Barak Richman, and Pablo T. Spiller, "Modeling Supreme Court Strategic Decision Making: The Congressional Constraint." Legislative Studies Quarterly 28 (2003), 247-280.

Segal and Spaeth, pp. 327-356.

Brian R. Sala and James F. Spriggs, II, "Designing Tests of the Supreme Court and the Separation of Powers," PRQ 57 (June 2004), 197-208.

Laura Langer, "Strategic Considerations and Judicial Review: The Case of Workers' Compensation Laws in the American States," Public Choice 116 (2003), 55-78.

2. Other mechanisms of influence (February 19th)

Walter M. Murphy, Elements of Judicial Strategy (1964), ch. 6.

Epstein and Knight, pp. 138-157.

Mark A. Cohen, "Explaining Judicial Behavior or What's 'Unconstitutional' About the Sentencing Commission?" Journal of Law, Economics & Organization 7 (1991), 183-199.

Timothy R. Johnson, "The Supreme Court, the Solicitor General, and the Separation of Powers," American Politics Research 31 (July 2003), 426-451.

C. Mass public opinion

1. The Supreme Court (February 21st)

William Mishler and Reginald S. Sheehan, "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions," APSR 87 (March 1993), 87-101.

Helmut Norpoth and Jeffrey A. Segal; William Mishler and Reginald S. Sheehan, "Popular Influence on Supreme Court Decisions," APSR 88 (September 1994), 711-724.

Kevin T. McGuire and James A. Stimson, "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." JOP 66 (November 2004), 1018-1035.

Epstein and Knight, pp. 157-177.

2. Elected judges (February 26th)

James Kuklinski and John Stanga, "Political Participation and Governmental Responsiveness: The Behavior of California Superior Courts," APSR 73 (December 1979), 1090-1099.

Melinda Gann Hall, "Electoral Politics and Strategic Voting in State Supreme Courts," JOP 54 (May 1992), 427-446.

Gregory A. Huber and Sanford C. Gordon, "Accountability and Coercion: Is Justice Blind When It Runs for Office?" AJPS 48 (April 2004), 247-263.

D. Elite opinion and social environments (February 28th)

Frederick Schauer, "Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior," University of Cincinnati Law Review 68 (2000), 615-636.

Gerald N. Rosenberg. 2000. "Incentives, Reputation, and the Glorious Determinants of Judicial Behavior." University of Cincinnati Law Review 68 (2000), 637-49.

Michael C. Dorf, "Does Federal Executive Branch Experience Explain Why Some Republican Supreme Court Justices 'Evolve' and Others Don't?" Harvard Law & Policy Review 1 (2007), 457-476.

VI. Two Special Contexts

A. Case selection (March 4th)

Segal and Spaeth, pp. 240-78.

H. W. Perry, Jr., Deciding to Decide: Agenda Setting in the United States Supreme Court (1991), ch. 9.

Gregory A. Caldeira, John R. Wright, and Christopher J. W. Zorn, "Sophisticated Voting and Gate-Keeping on the Supreme Court," Journal of Law, Economics, & Organization 15 (1999), 549-577.

Charles M. Cameron, Jeffrey A. Segal, and Donald Songer, "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," APSR 94 (March 2000), 101-116.

B. Change in individual behavior and collective policy (March 6th)

Jeffrey A. Segal, "Measuring Change in the Supreme Court: Examining Alternative Models," AJPS 29 (August 1985), 461-479.

Scott R. Meinke and Kevin M. Scott, "Collegial Influence and Judicial Voting Change: The Effect of Membership Change on U.S. Supreme Court Justices," Law & Society Review 41 (December 2007), 909-938.

Andrew D. Martin and Kevin M. Quinn, "Assessing Preference Change on the U.S. Supreme Court," Journal of Law, Economics & Organization 23 (issue #2, 2007), 365-385.

OR

Lee Epstein, Andrew D. Martin, Kevin M. Quinn, and Jeffrey A. Segal, "Ideological Drift Among Supreme Court Justices: Who, When, and How Important?" Northwestern University Law Review 101 (issue #4, 2007), 1483-1541.