

**Princeton University  
Department of Politics  
Graduate Program  
Fall 2018**

Judicial Politics (POL 541)  
Tuesday 1:30-4:20  
Robertson 008

John Kastellec  
Fisher 204  
[jkastell@princeton.edu](mailto:jkastell@princeton.edu)  
Office hours: Mondays  
3:30-4:30,  
or by appointment

### **Introduction**

This seminar is designed to provide overview of the major debates in Judicial Politics. The primary goals of the course are to familiarize students with the principal questions being asked by scholars in this subfield, the methodological approaches employed, and the avenues available for future research. This is not a course in constitutional law. Rather, the focus is on studying law and courts as political institutions and judges as political actors. We will examine decision making and power relations within courts, within the judicial hierarchy, and within the constitutional system. While we will concentrate on U.S. courts, we will also cover some material on other courts.

Topics include:

- **Law** What is Law? How do legal systems operate? How do we study law?
- **Courts and Judges** What do courts do? What do courts do that is different from legislatures? What do judges do? What do judges want? How do we study courts and judges? Decision making in appellate courts and the Supreme Court. Models of judicial decision making.
- **Bargaining on Collegial Courts** What do judges bargain over? Policy? Doctrine? How do they bargain? Do judicial institutions structure bargaining?
- **The Judicial Hierarchy** How is the judiciary organized? How does its structure affect decision making? What are the power relations within it? Lower court compliance. Auditing by the higher courts. The role of *stare decisis*. Agency and team approaches to hierarchy.
- **The Separation of Powers** What is the role of the judiciary within the Separation of Powers system? Judicial review. Interactions between courts and congress or the president. Battles over statutory interpretation and the Constitution. Constitutional crises. Court-curbing legislation.

## Course Requirements

- **Readings** The readings, though extensive and representative, are not comprehensive (even including all the recommended readings). Students are expected to have completed the assigned weekly reading before each class and to arrive prepared to contribute actively to all discussions. A warning—the reading load for this course is heavy and some of the readings are quite difficult, particularly for those without previous exposure to statistical methods or formal theory. This does *not* mean such exposure is a pre-requisite for the course. Rather, it means that you need to set aside sufficient time to work through these papers, to understand the substantive assumptions, intuitions, and results (even if you cannot work through the formal results or the statistical analyses themselves). If you get stuck, you should arrange to discuss such readings with me—which means you should start the readings early enough before the relevant class so that there is time for us to meet. We also will spend time in class working through some of the theoretical and empirical models from the readings.
- **Participation** In each class we will aim to clarify and probe the puzzles, theories, methods, and evidence presented in the readings and to assess the contributions they make to an understanding of judicial politics. The issues of research design we will explore, however, will be relevant throughout political science. This course will have a seminar format, though I will occasionally lecture on material as is necessary. Preparation for and active participation in our weekly discussions is of the utmost importance. You should expect to be called on at any time, to discuss any reading in any session. Preparation involves more than just doing the readings, but coming to class having thought about the material and having organized your thoughts. Each week, you should bring questions and points to discuss.
- **Written assignments**
  - Students may choose either option A or B
- **Option A** requires students to complete a combination of four short papers (about 4 to 6 pages). Short papers will react to the week's readings over the course of the semester. You will have discretion over which weeks you can write papers, subject to the constraint that two papers must be completed in the first seven weeks of the semester (i.e. before Fall Break). These papers must be emailed to me no later than **10 a.m. the day of class** (early papers are always welcome; late papers will not be accepted). I recommend this option for Masters students and Ph.D. students who do not believe they will go on to do research in judicial politics.

High quality reaction papers will avoid summarization and instead present critical analysis of most or all of that week's readings (you should not just pick at smaller points within one article). In your analysis, you might focus on:

- a. Questions addressed by the readings
- b. Contributions of the readings (i.e., what have we learned?)
- c. The place of the readings in the broader literature
- d. Critiques of the authors theoretical arguments, research design, evidence, and conclusions
- e. Avenues for future research

**2) Option B** requires students to write one short review paper along with an original research paper. The paper should be the length and style of a journal article, complete with a review of the relevant literature, an appropriate research design, and execution of that design. In most instances this will mean an empirical analysis or a formalization of a logical argument. Literature reviews are not acceptable. A draft proposal is due by November 15th. Feel free to speak to me early in and throughout the semester about possible paper topics. Students who write research papers will present their results the last day of class. The research paper is due by the last day of the semester. I strongly recommend this option for Ph.D. students with research interests in judicial politics.

Please note that you are not limited to a topic covered on the syllabus. As noted below, there are several topics in judicial politics we won't be able to cover. If you're interested in exploring a paper in one of these areas, please talk to me.

### Readings

I have created a zip file with the all the required readings that can be accessed on Blackboard.

I have ordered the following books for purchase at Labyrinth.

- Segal, Jeffrey, and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press: New York.
- Maltzman, Forrest, James Spriggs, and Paul Wahlbeck. 2000. *Crafting Law on the Supreme Court*. Cambridge University Press.
- Epstein, Lee, and Jack Knight. *The Choices Justices Make*. Washington, DC: CQ Press (1998),

I have also put these books on reserve at Firestone. It is up to you whether you would like to purchase them. If you plan on pursuing judicial politics beyond the class, it is probably worth doing so (especially Segal and Spaeth).

Here are some recommended books. Parts of them appear in the required readings (but you will not need to purchase them).

- Murphy, Walter. 1964. *Elements of Judicial Strategy*. University of Chicago Press
- Perry, H.W. 1991. *Deciding to Decide*. Harvard University Press
- Baum, Lawrence. 1998. *The Puzzle of Judicial Behavior*. University of Michigan Press. -  
(This is an excellent literature review of all things judicial politics.)
- Farnsworth, Ward. 2007. *The Legal Analyst: A Toolkit for Thinking about the Law*. University of Chicago Press. (An excellent introduction to how the law and legal rules deal with such things as coordination problems, prisoners dilemmas, etc.)
- Hall, Kermit (ed) *The Oxford Companion to the Supreme Court*. (A very good reference book). Oxford.
- Epstein et al. 2006. *Supreme Court Compendium, 4th ed*. CQ Press (A good source for data – earlier editions will be cheaper online).

- Shapiro, Martin. 1981. *Courts: A Comparative and Political Analysis*. University of Chicago Press.
- Posner, Richard. 2008. *How Judges Think*. Harvard University Press.

## Schedule of Topics

- Week 1 (9/18) Why study courts? And how?
- Week 2 (9/25) The “Legal Model”, the Attitudinal Model and the “Strategic Model”
- Week 3 (10/2) Measuring Judicial Ideology
- Week 4 (10/9) Modeling Collegial Courts and Modeling Law I—Legal Rules and Doctrine
- Week 5 (10/16) Modeling Collegial Courts and Modeling Law II: Precedent
- Week 6 (10/23) The Judicial Hierarchy I— Team Models/Learning
- Week 7 (11/6) The Judicial Hierarchy II— Agency Models
- Week 8 (11/13) The Judicial Hierarchy III—Peer effects on appellate courts
- Week 9 (11/20) Bargaining and Power on The U.S. Supreme Court
- Week 10 (11/27) Agenda Setting and Case Selection
- Week 11 (12/4) Separation of Powers Games
- Week 12 (12/11) Courts, Public Opinion and Elections

Note that the many of the subjects we will discuss will overlap across multiple weeks. For instance, it doesn't make sense to think about hierarchy without thinking about legal rules. You should try to draw connections to earlier readings and classes as we move through the semester.

Also note that this list of topics is far from exhaustive. The most notable omission is that we will cover little from the American Political Development [APD] approach to judicial politics, such as the judiciary's role in the creation of right or the development of judicial review. If you're interested in such lines of inquiry, Professors Whittington and Frymer cover much of this ground in their graduate seminars.

Other topics not covered include the politics of judicial expansion and appointments; the politics of settlements, trial and juries; and most of the literatures in state and comparative judicial politics. In addition, the syllabus leans towards the institutional side of the subfield than the behavioral side (though we will read several behavioral classics). If you're interested in exploring topics outside those we cover, either through independent study or for your research paper, please let me know.

# Weekly Readings

## Week 1: Why study courts? And how?

- Paul Milgrom, Douglass North, and Barry Weingast, “The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs,” *Economics and Politics* 2(1):1-23 (1990) [*Focus on the intuition, not the math*]
- C. Herman Pritchett, “The Roosevelt Court: Votes and Values,” *The American Political Science Review*, Vol. 42, No. 1 (Feb., 1948), pp. 53-67
- Lee Epstein and Jack Knight, “Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead” (Field Essay) *Political Research Quarterly* 53: September 2000
- Barry Friedman. 2006. "Taking Law Seriously." *Perspectives on Politics* 4-2 (June): 261-76.
- Jeffrey Lax. “The New Judicial Politics of Legal Doctrine,” *Annual Review of Political Science*, Vol. 14: June 2011

### Recommended

- Martin Shapiro, *Courts: A Comparative and Political Analysis*, all, but especially Ch. 1
- Rogers Smith, “Political Jurisprudence, the ‘New Institutionalism,’ and the Future of Public Law,” 82 *APSR* 89-108 (1988).
- Robert Barro, “Democracy and the Rule of Law,” pp. 209-231 in Bruce Bueno de Mesquita and Hilton Root (eds) *Governing for Prosperity*, Yale UP (2000) [ER]
- Rafael La Porta et al. 2004. “Judicial Checks and Balances.” *Journal of Political Economy*. 112(2):445.
- Martin Shapiro, “Public Law and Judicial Politics,” in *Political Science: The State of the Discipline II*, ed Ada Finifter (1993)
- Pritchett, C. Herman. “Public Law and Judicial Behavior.” *Journal of Politics* 30-2:480-509.
- Timothy Frye and Ekaterina Zhuravskaya, “Rackets, Regulation, and the Rule of Law,” *Journal of Law, Economics and Organization* 16 (2):478-502 (2000)

## Week 2: The “Legal Model”, the Attitudinal Model and the “Strategic Model”

(Note the amount of reading this week is heavier than most.)

- Segal, Jeffrey, and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press: New York. Chapters 1, 2, 3 (skip the Separation of Powers section for now), Chapter 7 (pp. 288-311) and Chapter 8 (again skip the Separation of Powers section).
- Symposium on *The Supreme Court and the Attitudinal Model*. 1994.
- Symposium on *The Supreme Court and the Attitudinal Model Revisited*. 2003.
- Epstein, Lee, and Jack Knight. *The Choices Justices Make*. Washington, DC: CQ Press(1998), chapters 1,3,4 (you might want to skim chapter 2)
- Maltzman, Forrest, James Spriggs, and Paul Wahlbeck. 2000. *Crafting Law on the Supreme Court*. Cambridge University Press. Chapters 1-3.

### Recommended

#### ***Legal Model***

- Mendelson, Wallace. 1963. “The Neo-Behavioral Approach to the Judicial Process: A Critique.” *APSR* 57: 593-603.
- Spaeth, Harold J. 1965. “Jurimetrics and Professor Mendelson: A Troubled Relationship.” *Journal of Politics* 27: 875-80.
- Mendelson, Wallace. 1964. “The Untroubled World of Jurimetrics.” *Journal of Politics* 26: 914-22.
- Mendelson, Wallace. 1964. “An Open Letter to Professor Spaeth and His Jurimetric Colleagues.” *JP* 28: 429-32.
- Kort, Fred. 1964. “A Comment on ‘The Untroubled World of Jurimetrics.’” *JP* 26: 923-8.
- Mendelson, Wallace. 1964. “Response by Professor Mendelson.” *JP* 26: 927-8.
- Cross, Frank B. “Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance.” *NWLR* 92-1.
- Barry Friedman and Andrew D. Martin. "Looking for Law in All the Wrong Places: Some Suggestions for Modeling Legal Decisionmaking." Presented at the What's Law Got To Do With It? Conference, Indiana University Maurer School of Law, March 2009. more l
- George, Tracey E., and Lee Epstein. (1992) “On the Nature of Supreme Court Decision Making,” *The American Political Science Review*, Vol. 86, No. 2, pp. 323-337

#### ***Attitudinal Model***

- Epstein, Lee, William Landes, and Richard Posner. 2012. *The Behavior of Federal Judges*, Chapter 1 “A Realistic Theory of Judicial Behavior,” (pp. 25-64)
- Cameron, Charles and Lewis Kornhauser, “Rational Choice Attitudinalism? A Review of Epstein, Landes, and Posner,” *European Journal of Law and Economics* (2015).
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- ***The next series of papers examines the debate over Segal and Spaeth’s test as to whether Supreme Court justices are constrained by precedent:***
  - Segal, Jeffrey and Harold Spaeth. (1996). “The Influence of Stare Decisis on the Votes of United States Supreme Court Justices,” *AJPS* 40(4). *The original version of The Supreme Court and the Attitudinal Model Revisited* chapter 7.
  - Songer, Donald R, and Stefanie A. Lindquist (1996). Not the Whole Story: The Impact of Justices’ Values on Supreme Court Decision Making. *American Journal of Political Science*, 40(4), pp. 1049-1063.
  - Brisbin, Richard. (1996). “Slaying the Dragon: Segal, Spaeth and the Function of Law in Supreme Court Decision Making,” *American Journal of Political Science*.

- Knight, Jack and Lee Epstein. (1996). "The Norm of Stare Decisis," *American Journal of Political Science*.
- Brenner, Saul and Marc Stier (1996). "Retesting Segal and Spaeth's Stare Decisis Model," *American Journal of Political Science*, 40(4), pp. 1036-1048
- Segal, Jeffery A. and Harold J. Spaeth (1996). "Norms, Dragons, and Stare Decisis: A Response." *American Journal of Political Science*, 40(4), pp. 1049-63.

### **"Strategic Model"**

- Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge UP (2002) chapter 9
- Thomas Walker, Lee Epstein, & William J. Dixon, "On the Mysterious Demise of Consensual Norms in the United States Supreme Court," *Journal of Politics* 50(2):361-89 (1988)
- Hammond, Thomas H., Chris W. Bonneau, and Reginald S. Sheehan. 2005. *Strategic Behavior And Policy Choice On The U.S. Supreme Court*. Palo Alto, CA: Stanford University Press.
- C. Herman Pritchett, "Divisions of Opinion Among Justices of the U.S. Supreme Court," *APSR* 35: 890-898 (1941).
- Howard, J. Woodford, Jr. 1968. "On the Fluidity of Judicial Choice." *American Political Science Review* 62 (March): 43-56.
- Brenner, Saul. 1982. "Strategic Choice and Opinion Assignment on the U.S. Supreme Court: A Reexamination." *Western Political Quarterly* 35: 204-11.
- Brenner, Saul, and Harold J. Spaeth. 1988. "Majority Opinion Assignment and the Maintenance of the Original Coalition on the Warren Court." *American Journal of Political Science* 32 (February): 72-81.
- Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "May It Please the Chief? Opinion Assignment in the Rehnquist Court," *American Journal of Political Science* 40 (May): 421-443.



### Week 3: Measuring Judicial Ideology

- Segal, Jeffrey A. and Cover, Albert D. (1989). "Ideological Values and the Votes of U.S. Supreme Court Justices," *The American Political Science Review*, Vol. 83, No. 2, pp. 557-565.
- Ho, Daniel and Kevin M. Quinn. 2010. "How Not To Lie with Judicial Votes: Misconceptions, Measurement, and Models." *California Law Review*.
- Joshua Fischman and David Law. "What is Judicial Ideology, and How Should We Measure it?" 2009. *Washington University Journal of Law & Policy*. 29:133.
- Epstein et al., *Ideological Drift Among Supreme Court Justices: Who, When, and How Important?* *Northwestern University Law Review* 101 (4): 1483-1542 (*skim*)
- Farnsworth, Ward. 2007. "The Use and Limits of Martin-Quinn Scores to Assess Supreme Court Justices, with Special Attention to the Problem of Ideological Drift." *Northwestern University Law Review* 101(4):1891-1904
- Bailey, Michael. "Comparable Preference Estimates across Time and Institutions for the Court, Congress, and Presidency." *American Journal of Political Science*, Vol. 51, No. 3 (Jul., 2007), pp. 433-448

#### Recommended

- Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999." *Political Analysis* 10: 134-53. (*The original Martin-Quinn paper if you're interested in the details.*)
- Michael Bailey. 2013. "Is Today's Court the Most Conservative in Sixty Years? Challenges and Opportunities in Measuring Judicial Preferences." *Journal of Politics*
- Michael Bailey. 2016. "Measuring Ideology on the Courts." Working paper. [https://michaelbailey.georgetown.domains/wp-content/uploads/2018/05/MeasuringIdeology\\_Jan2016.pdf](https://michaelbailey.georgetown.domains/wp-content/uploads/2018/05/MeasuringIdeology_Jan2016.pdf)
- Epstein, Lee and Mershon, Carol. (1996). "Measuring Political Preferences," *American Journal of Political Science*, Vol. 40, No. 1, pp. 261-294.
- Micheal W. Giles, Virginia Hettinger, and Todd C. Peppers, "Measuring the Preferences of Federal Judges: Alternatives to Party of the Appointing President," (2002)
- Paul Brace, Laura Langer, and Melinda Gann Hall. 2000. "Measuring the Preferences of State Supreme Court Judges." *Journal of Politics* 62 (May): 387-413.
- Epstein et al., "The Judicial Common Space" *JLEO*. 23(2): 303-25.
- Gregory C. Sisk and Michael Heise. 2005. "Judges and Ideology: Public And Academic Debates About Statistical Measures" *Northwestern University Law Review* 99:2.
- Matthew Hall, Jason H. Windett and Jeffrey J. Harden. "Estimating Dynamic Ideal Points for State Supreme Courts," with 2015. *Political Analysis*. 23(3):461-469.

#### **Week 4: Modeling Collegial Courts and Modeling Law I: Legal Rules and Doctrine**

- Jeffrey Segal, "Predict Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981," *APSR* 78: 891-900 (1984)
- Lewis Kornhauser, "Modeling Collegial Courts II: Legal Doctrine," *JLEO* 8:441-470 (1992). (*Tough going but a fundamental paper.*)
- Jeffrey R. Lax, "Constructing Legal Rules on Appellate Courts," *American Political Science Review* 101(3):591-604 (2007)
- Callander, Steven, and Tom S. Clark, "Precedent and Doctrine in a Complicated World," *American Political Science Review* 111(1):184-203 (2017)
- Kastellec, Jonathan, 2010. "The Statistical Analysis of Judicial Decisions and Legal Rules with Classification Trees," *Journal of Empirical Legal Studies*.

#### *Recommended*

- Wahlbeck, Paul J. 1997. "The Life of the Law: Judicial Politics and Legal Change." *Journal of Politics* 59(August): 778-802.
- Edward Levi. 1949. *An Introduction to Legal Reasoning*. (A classic for understanding how to "think like a lawyer.")
- Dimitri Landa and Jeffrey Lax, "Legal Doctrine on Collegial Courts", *Journal of Politics*, Vol. 71(3): July 2009
- Jeffrey Lax, 2012. "Political Constraints on Legal Doctrine: How Hierarchy Shapes the Law." *Journal of Politics*
- Spiller, Pablo T., and Matthew L. Spitzer. 1992. "Judicial Choice of Legal Doctrines." *Journal of Law, Economics, and Organization* 8(March):8-45.
- Hugo M. Mialon, Paul Rubin and Joel Schrag, "Judicial Hierarchies and the Rule-Individual Tradeoff," *Supreme Court Economic Review* 15(1) (2007)
- Easterbrook, Frank. "Ways of Criticizing the Court." *95 Harvard Law Review* 802.

## Week 5: Modeling Collegial Courts and Modeling Law II: Precedent

- Richard Posner, “What Do Judges Maximize?” pp. 109-144 in Posner *Overcoming Law* (1995)
- Bueno de Mesquita, Ethan and Stephenson, Matthew (2002). “Informative Precedent and Intrajudicial Communication,” *American Political Science Review*, 96(4) 755-766
- Richards, Mark J. and Herbert M. Kritzer. (2002). “Jurisprudential Regimes in Supreme Court Decision Making” *American Political Science Review*. Vol. 96, No. 2.
- Michael Bailey and Forest Maltzman. 2008. “Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court.” *APSR* 102(3):369-84.

### *Recommended*

- Segal, Jeffrey and Harold Spaeth. (1996). “The Influence of Stare Decisis on the Votes of United States Supreme Court Justices,” *AJPS* 40(4). *The original version of The Supreme Court and the Attitudinal Model Revisited* chapter 7.
- Schwartz, Edward P. (1992). “Policy, Precedent, and Power: A Positive Theory of Supreme Court Decision-Making.” *Journal of Law, Economics, and Organization*, Vol. 8, No. 2.
- Barkow, Rachel. 2005-06. “Originalists, Politics and Criminal Law on the Rehnquist Court.” *GW Law Review* 74:1043
- Nicola Gennaioli and Andrei Shleifer. 2007. “The Evolution of Common Law.” *Journal of Political Economy* 115: 43–68.
- Brandon Bartels. “2009. “The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court.” *American Political Science Review* 103(3):474-95.
- Jeffrey Lax and Kelly Rader, “Legal Constraints on Supreme Court Decision Making: Do Jurisprudential Regimes Exist?” *Journal of Politics*, Vol. 71(2): April 2010.
- Clark, Tom. (2015). Scope and precedent: Judicial rule-making under uncertainty. *Journal of Theoretical Politics*, 28(3), 1–32.
- Justin Fox & Georg Vanberg. (2014). “Narrow Versus broad Judicial Decisions.” *Journal of Theoretical Politics*, 26(3), 355–383.
- Hinkle, R. K. (2015). Legal Constraint in the US Courts of Appeals. *Journal of Politics*, 77(3), 721–735.
- Charles M. Cameron, Lewis A. Kornhauser, and Giri Parameswaran, “Stare Decisis and Judicial Log-Rolls: A Gains-from-Trade Model”. Working paper.

## Week 6: The Judicial Hierarchy I—Team Models/Learning

- Kornhauser, Lewis. 1995. "Adjudication by a Resource-Constrained Team: Hierarchy and Precedent in a Judicial System," 68 *Southern California Law Review* 1605 (1995)
- Cameron, Charles M., and Lewis A. Kornhauser, 2006. "Appeals Mechanisms, Litigant Selection, and the Structure of Judicial Hierarchies," in James R. Rogers, Roy B. Flemming and Jon R. Bond (eds.), *Institutional Games and the U.S. Supreme Court*. Charlottesville: University of Virginia Press
- Jonathan Kastellec & Tom Clark. 2013. "The Supreme Court and Percolation in the Lower Courts: An Optimal Stopping Model," *Journal of Politics*, 2013, 75(1): 150-68.
- Deborah Beim. 2017. "Learning in the Judicial Hierarchy." 2017. *Journal of Politics* 79(2).

### *Recommended*

- Lewis Kornhauser. 1999. "Appeal and Supreme Courts." *Encyclopedia of Law and Economics*.
- Mathias Dewatripont and Jean Tirole, 1999. "Advocates", *Journal of Political Economy*.
- Talley, Eric. 1999-2000. "Precedential Cascades: An Appraisal." 73 S. Cal. L. Rev. 87
- Scott Baker and Claudio Mezzetti. 2012. "A Theory of Rational Jurisprudence." Washington University working paper
- David Klein. 2002. *Making Law on the U.S. Courts of Appeals*. New York: Cambridge University Press. Chapters 3 & 6.
- Thomas Hansford, James Spriggs and Anthony Stenger. 2013 "The Information Dynamics of Vertical Stare Decisis." *Journal of Politics*

## Week 7: The Judicial Hierarchy II—Agency Models

- Donald Songer, Jeffrey Segal, and Charles Cameron, 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions," *AJPS*.
- Cameron, Charles M., Jeffrey A. Segal, and Donald Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," *American Political Science Review*
- McNollgast. 1995. "Politics and the Court: A Positive Theory of Judicial Doctrine and the Rule of Law." *Southern California Law Review* 68.
- Carrubba, Clifford J., and Tom S. Clark, "Rule Creation in a Political Hierarchy," *American Political Science Review* 106(3):622-643 (2012)
- Badawi, A. B., & Baker, S. (2015). "Appellate Lawmaking in a Judicial Hierarchy." *Journal of Law and Economics*, 58(1), 139–172.

### Recommended

- Jonathan Kastellec. "The Judicial Hierarchy: A Review Essay." *Oxford Research Encyclopedia of Politics*.
- Frank Cross and Emerson Tiller, "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeal," *Yale Law Journal* 107:2155-2176 (1998)
- Tom Clark, "A Principal-Agent Theory of *En Banc* Review," *Journal of Law, Economics & Organization* 25(1):55-79 (2009)
- Micheal W. Giles, Virginia Hettinger, Christopher Zorn and Todd Peppers, "The Etiology of *En Banc* in the U.S. Courts of Appeals." *American Journal of Political Science* 51 (3):449-463 (2007)
- Donald Songer, Charles Cameron and Jeffrey Segal, "An Empirical Test of the Rational-Actor Theory of Litigation," *JOP* 57:1119-1129 (1995)
- Chad Westerland, Jeffrey Segal, Lee Epstein, Scott Comparato and Charles Cameron. 2010. "Strategic Defiance and Compliance in the U.S. Courts of Appeals." *American Journal of Political Science*.
- Carolyn Shapiro. 2006. "The Limits of the Olympian Court. Common Law Judging vs. Error Correction in the Supreme Court." *63 Wash & Lee L. Review* 271.
- Lax, Jeffrey R. 2003. "Certiorari and Compliance in the Judicial Hierarchy: Discretion, Reputation, and the Rule of Four," *Journal of Theoretical Politics* 15(1): 61-86.
- Spitzer, Matt, and Talley, Eric. 2000. "Judicial Auditing," *Journal of Legal Studies* 29(2): 649-683.
- Jeffrey Lax, "Political Constraints on Legal Doctrine: How Hierarchy Shapes the Law." *Journal of Politics*. 2012.
- Beim, Hirsch & Kastellec. 2016. "Signaling and Counter-Signaling in the Judicial Hierarchy: An Empirical Analysis of *En Banc* Review," *AJPS*.
- Clark, Tom S., and Clifford J. Carrubba, "A Theory of Opinion Writing in a Judicial Hierarchy," *Journal of Politics* 74(2):584-603 (2012)

## Week 8: The Judicial Hierarchy III—Peer Effects on Appellate Courts

- Frank Cross and Emerson Tiller, “Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeal,” *Yale Law Journal* 107:2155-2176 (1998)
- Beim, Hirsch & Kstellec. 2014. “Whistleblowing and Compliance in the Judicial Hierarchy,” *American Journal of Political Science*, 2014, 58(4):904-918.
- Kstellec, Jonathan. “Racial Diversity and Judicial Influence on Appellate Courts,” *American Journal of Political Science*, 2013, 57(1):167-83.
- Joshua Fischman. 2011. Estimating Preferences of Circuit Judges: A Model of Consensus Voting.” *Journal of Law and Economics*.
- Joshua Fischman. 2015. “Interpreting Circuit Court Voting Patterns: A Social Interactions Framework” 31 *Journal of Law, Economics & Organization* 808 (2015).

### Recommended

- Richard Revesz, 1997. "Environmental Regulation, Ideology, and the D.C. Circuit," *Virginia Law Review* 83(8): 1717-1772.
- Farhang, Sean, and Gregory Wawro. 2004. “Institutional Dynamics on the U.S. Court of Appeals: Minority Representation Under Panel Decision Making.” *Journal of Law, Economics, and Organization*
- Jonathan P. Kstellec, “Panel Composition and Judicial Compliance on the U.S. Courts of Appeals,” *JLEO*, 23(2): 421-41 (2007) .
- Cox, Adam B., and Thomas J. Miles. 2008. “Judging the Voting Rights Act.” *Columbia Law Review*. 108(1): 1–54.
- Boyd, Christina L., Lee Epstein and Andrew Martin. 2010. “Untangling the Causal Effects of Sex on Judging.” *AJPS*.
- Jonathan Kstellec. “Hierarchical and Collegial Politics on the U.S. Courts of Appeals.” *Journal of Politics*, 2011, 73(2):345-6.
- Rachael K. Hinkle. 2017. "Panel Effects and Opinion Crafting in the U.S. Courts of Appeals." 5 *Journal of Law and Courts* 313-336.
- Sean Farhang, Jonathan Kstellec & Greg Wawro. “The Politics of Opinion Assignment and Authorship on the U.S. Court of Appeals: Evidence from Sexual Harassment Cases.” 2015. *Journal of Legal Studies*. 44(S1):S59-S85.
- Cass Sunstein *et al.* *Are Judges Political? An Empirical Analysis of the Federal Judiciary*, Brookings, 2006.
- Frank Coffin. 1980. *The Ways of a Judge*.

## Week 9: Bargaining and Power on The U.S. Supreme Court

- Walter Murphy, *Elements of Judicial Strategy*. U Chicago Press. 1964. Ch. 3.
- 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." *American Journal of Political Science*, Vol. 51, No. 4 (Oct., 2007), pp. 890-905
- Lax, Jeffrey R. and Cameron, Charles M. 2007. "Bargaining and Opinion Assignment on the U.S. Supreme Court." *Journal of Law, Economics, and Organization* 23-2: 276-302.
- Cliff Carrubba, Barry Friedman, Andrew D. Martin, and Georg Vanberg. 2012. "Who Controls the Content of Supreme Court Opinions." *AJPS*.
- Tom S. Clark and Benjamin Lauderdale, 2010. "Locating Supreme Court Opinions in 'Doctrine Space,'" *American Journal of Political Science*.

### *Recommended*

- Giri Parameswaran, Cameron, Charles and Lewis Kornhauser, "Bargaining on Appellate Courts." Princeton University working paper.
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