RPOS 536: COMPARATIVE JUDICIAL POLITICS

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Location: HS 013
Time: W 5:45-8:35
Office Hours: (in HU 016)
TuTh: 1:30-2:30
or by appointment

Course Description. This course is about judicial politics in different countries, i.e., different justice systems. Judicial politics is the study of how political dynamics shape courts (including justice reforms and actual court decisions) and how courts, in turn, shape politics (including the broader social impact of decisions). The course introduces the main systems of law in the world and the primary theoretical approaches to understanding judicial politics, proceeding to analyze how legal actors and institutions in different systems of law interact with various patterns of democracy and democratization. Thus, the course explores two main causal relationships: (1) the effect of politics on the judiciary (politics-to-courts influences), e.g., political interference in the independence of judges; and (2) the impact of the judiciary on politics (courts-to-politics influences), e.g., constraints courts place on governments, or the societal impact of court decisions. The first half of the course emphasizes the rise of judicial power and principal methodological and conceptual questions facing scholars of judicial politics across different legal traditions, while the second half of the course highlights four prominent research questions: (1) why empower courts? (2) once empowered, why and how are these courts activated? (3) on these courts, why and how do judges behave (i.e., decide cases)? And (4) what impact do courts have? Examples will draw from experiences inside and outside the U.S., with special emphasis on Latin American judicial politics. The principal course requirement is a research paper.

Readings

The main texts for this course are:


Used and new copies of these books are available at Mary Jane's bookstore and at various online booksellers. 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 electronic databases that can be accessed through the library. Where otherwise unavailable, I will provide these materials for you.

**Grading**

**Participation** (10%). This is a graduate seminar, not a lecture class. Participation is essential.

**Discussion guides** (10%). Each week, someone will be in charge of initiating the discussion of the readings. If you are in charge of the discussion that week, you will need to prepare a discussion guide of no more than 5 typed pages. This guide should briefly summarize the main points of the readings and then highlight key questions relevant to the class. For instance, how do the authors conceptualize and measure judicial power? What is the main theoretical question? Is the causal argument clear? Does the evidence support the main thrust of the argument? Why or why not? To emphasize, each discussion guide should contain at least 5 of these question but no more than 10 questions to get the discussion going. Depending on the size of class, each of you may be responsible for more than one discussion.

**Theory reflection paper** (20%). About two-thirds of the way through the semester, you will need to deliver a reflection paper (about 5 pages) addressing a particular theory in the materials. More details on this in class.

**Research Paper** (60%). A paper of 25-35 pages is required for this class. You will be required to meet with me twice during the semester in order to discuss your proposed research and to make sure you are on track.

**Email.** I expect you to check your email. You are responsible for material sent by email. However, if you have a substantial 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.

**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 (Jan 23)
Introduction: no readings; overview of course; history of public law/judicial politics; introductions

- Recommended reading on Public Law, Law and Courts, and Judicial Politics
  - Segal and Spaeth. 2002. Ch. 4 - “Political History of Supreme Court”

WEEK 2 (Jan 30)
I. The Global Spread of Judicial Power & Normative Relevance of Law & Courts for Development and Democracy

- Required reading:
  - 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)

- Recommended reading
  - UNDP Report 2004 (see above)
  ▪ Frances Stewart and Severine Deneulin. “Amartya Sen’s Contribution to Development Thinking.”
  ▪ Amartya Sen. “Response to Commentaries.”

WEEK 3 (Feb 6)
II. Thinking Method(olog)ically
Methodological Foundations: Thinking about the way you think
  • Required reading:
  • Recommended reading:
    ▪ A Science of Comparative Judicial Politics? An Exchange
WEEK 4 (Feb 13)

III. Conceptual Challenges: Judicial Power Across Legal Traditions

- **Required reading**

- **Recommended reading**:


WEEK 5 (Feb 20) Political Insurance

- **Required reading**:
  - 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
- Cignarella and Richards data
- Ginsburg and Elkins data, Comparative Constitutions Project

Recommended:
  - See also references in Morris and Blake (2010) regarding corrosive effect of initial democratic openings
- Popova, Maria. TBA

WEEK 6 (Feb 27) Hegemonic Preservation & Governance Theses
- Required reading:
- Recommended:

WEEK 7 (Mar 6) Negative Effects of Electoral Competition and Democratic Openings
- Required:
    - See also references in Morris and Blake (2010) regarding corrosive effect of initial democratic openings
  - Popova, Maria. [TBA]

*** complete first interview regarding research paper by end of this week ***

WEEK 8 (Mar 13) Ideational Theories
- Required
• Recommended reading:

WEEK 9 (Mar 20)
NO CLASS (Spring Break)

WEEK 10 (Mar 27): Strategic Accounts
• Required:
  o Pozas-Loyo, Andrea, and Julio Rios-Figueroa. 2010.
  o Clark, Tom S. 2009.
• Recommended
  o Negretto, G. TBA
  o Vanberg, G. TBA
  o Fabrinni. TBA

V. Theory 2: Political Origins of Litigation (Why Activate Courts?)

WEEK 11 (Apr 3)
• Required:
• Recommended:
• Additional recommended reading:
  o McAdam, McCarthy, and Zald (1996)
• And social movement literature in general

*** complete second interview on research paper by end of this week ***

VI. Theory 3: Judicial Decision Making (Why and How to Decide?)

WEEK 12 (Apr 10)
Legal model
• Required:
  o Review Shapiro (1980), Ch. 3
  o Selection from Judges on Judging [TBA]
• Recommended reading

WEEK 13 (Apr 17)
Attitudinal Model
• Required:
  o 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)
  o Selection from Woods/Hilbink symposium [TBA]
• Recommended reading
WEEK 14 (Apr 24)
Strategic Model
• Required reading
  o Review Ginsburg, Ch. 3 and 4 (pp. 65-105)
• Recommended reading
  o 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)
• Additional recommendations regarding new directions: network models
  o Fowler et al., TBA
  o Katz et al. 2011 (TBA)

WEEK 15 (May 1)
VII: Who Wins?
• Required reading

WEEK 16 (May 8) *** last day of classes ***
VIII: Why Comply? What Impact do Courts Have?
• Required reading
• Recommended:


Note: Connect to broader debates on corruption (e.g., conclusion from Morris and Blake?)

*** PAPERS DUE TODAY AT START OF CLASS ***

Additional recommended reading:


Additional Resources:

(1) Supreme Court Blog: [www.scotusblog.com](http://www.scotusblog.com)
(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


(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