POS 327: COMPARATIVE JUDICIAL POLITICS

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Location: ES 245
Time: TuTh 4:15-5:35
Office Hours: TuTh: 3-4

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 social impact of institutional rules and decisions). The course introduces the two main systems of law in the world and the primary theoretical approaches to understanding judicial politics, proceeding to analyze how institutions and actors 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 principal conceptual and theoretical questions facing scholars of judicial politics, while the second half of the course highlights substantive, empirical problems. Examples will draw from experiences inside and outside the U.S., with special emphasis on Latin American judicial politics. Principal course requirements consist of a research paper and an exam.

Pre-requisites. There are no pre-requisites for this course. However, Introduction to Comparative Politics is strongly recommended. Other recommended courses include American Politics, Constitutional Law, Constitutional Rights, and Judicial Process.

Requirements

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 via the electronic databases that can be accessed with through Blackboard or the library. Where otherwise unavailable, I
will provide these materials for you. We meet two times per week, and you should read ahead for each class.

**Grading**
- Questions: 10%
- Quizzes: 10%
- Abstract, Outline, and References: 15%
- Comments on Abstract and Outline: 15%
- Research Paper: 50%

**Questions and Quizzes.** Active engagement with the material is critical to your success in class. Generally, you need to encounter the material at least three times in order for you to understand it in any depth. For some people, this may be easy to do independently. However, for most people, the easiest and fastest way to encounter the material three times is to (1) read for class, (2) participate in class discussions, and (3) write notes, outline, or review the material for an exam. Therefore, staying current with the reading and participating in class put you in a much better position to work with the material when you take an exam or write a paper later in the course.

Considering the importance of participation and active engagement with the materials, several elements of the course are designed to encourage you to come prepared for each day of class. Two of these components are **Reading Questions** and **Reading Quizzes**. Aside from the first day, you are responsible for submitting three questions related to that day’s assigned reading on **every Tuesday** that we have class. These are questions of your own that occur to you as you are doing the reading. You do not need to answer the questions. These questions should be considered written assignments, and should be submitted to me **within the first five (5) minutes of class each Tuesday**.

Separately, I will **toss a coin at the start of class each Thursday to determine if there will be a quiz.** If the result is heads, there will be a short quiz on the reading for that day. If the result is tails, there will be no quiz. If you have done the reading for that day, you should not have any trouble with the quiz. I will collect all quizzes within the first five minutes of class.

**No late questions or quizzes will be accepted.** Either you are there to turn in the questions or take the quiz, or you are not. Collected questions and quizzes will count towards a total of 20% of your final grade.

**Paper.** A 10-page research paper is required for this class. The paper is actually an assignment in three parts. **Part1:** you must submit an abstract, outline, and references for this paper on [day, date]. The abstract should be no more than 300 words, the outline should consist of at least two, single-spaced pages, and be annotated to provide sufficient detail, and you should have a separate list of references at the end. Please submit **two copies** of this document – one is for me and one is for one of your colleagues. I will distribute the second copy in class the same day. **Part2:** your comments on your colleague’s abstract and outline are due the following [day, date]. These comments must
be typed separately so that your classmate can read them easily, and you should provide at least one, double-spaced page of comments covering concepts, theory, methods, case selection. Please also submit two copies of these comments so that I can receive one copy for grading and your colleague can receive a copy of their own. Part 3: the final paper is due on the last day of class, [day, date].

You will have the option of writing in one of four categories (if you prefer to write on a topic that cannot fit into one of these four categories, we can arrange to do so):

1. explain the legal and political context of a single country, court, or judge, discuss how legal and political factors interact to shape judicial outcomes, and evaluate against desired or normative standards;
2. compare explanations of judicial reform and institutional change, discuss strengths and weaknesses of each approach, and evaluate how they apply to a particular country or instance of reform;
3. compare two models of judicial decision-making, the strengths and weaknesses of each, and evaluate how they explain the outcome of a particular case or judge’s position; or
4. analyze one or more instances of judicial impact; using models of judicial impact discussed in class, discuss why the court’s decision will result in substantial “social reform” or "social change", or why it will not do so.

Each paper should follow the structure set out in the detailed document on paper instructions, which I will distribute later in the semester. Make sure you refer to this document in preparing your work for this assignment. We will also discuss the instructions in greater detail in class.

Additionally, make sure to cite all sources properly and include a bibliography. Papers should be double spaced, and use 1-inch margins and 12-point, Times New Roman font.

I have provided some helpful resources on how to write social science papers online, as well as sources on how to read nonfiction books for content (i.e., quickly).

Note that the second part of the paper assignment involves commenting on one of your colleague’s work. You comments should offer constructive feedback that will help strengthen your colleague’s paper. Also, your comments are being evaluated. Thus, as you make your comments, you should follow the five components of the paper identified above and make at least one comment on each component, gauging how well your colleague has addressed each section. For instance, is the research question clearly stated? Is it clear why this question is important or interesting? Further detail on this assignment will be covered in class.

Email. I expect you to check your email. You are responsible for material sent by email.

Late Work and Missed Exams. All work must be turned in within the first 5 minutes of class on the day it is due, or by 5pm if there is no class on the due date. Without a legitimate (e.g., medical or family emergency) and documented explanation, late work will be penalized one letter grade for each day it is late, and it is considered late if turned in beyond the time limits above (i.e., after the first 5 minutes of class, or after 5pm on days
there is no class; this includes weekends and holidays). Daily questions and quizzes must be turned in at the beginning of class – no exceptions. No late exams will be given.

**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 call or email me, or contact the Department of Political Science administrative offices, so that we can set up an appointment.

**CLASS SCHEDULE**

**WEEK 1**

I. Introduction: Public Law, Law and Courts, and Judicial Politics

Introductions; overview of course; history of public law/judicial politics

- **Recommended reading**
  - Segal and Spaeth. 2002. Ch. 4 - “Political History of Supreme Court”

* NO CLASS THUR., AUG. 30 - APSA CONFERENCE *

II. Big Picture: Law, Development, and Democracy

- **Required reading:**

- **Recommended reading**
WEEK 2

III. 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 3
IV. Legal and Institutional Background

Common Law systems
- Required reading:
  - Glendon et al.: Introduction (pp. 1-16) and Part 2 (153-180, 181-215)

Common Law systems, cont.
- Required reading:
  - Glendon et al., cont. (216-243, 266-274, 275-310)

WEEK 4
* NO CLASS T 9/18 *

Civil Law
- Required reading:
  - Glendon et al.: Part 1 (17-96)

Civil Law, cont.
- Required reading:
  - Glendon et al., cont.: (97-150)
  - Update on French Model

WEEK 5
* NO CLASS T 9/25 *

Topics in Comparative Law
- Required reading
  - Institutional topics:
    - Dorf, "Abstract and Concrete Review"
    - Resnik, "Judicial Independence"
  - Jurisprudential topics
• Rao, "Abortion Rights"
• Brownstein, "Religious Freedom"

• Recommended Reading:

WEEK 6
V. Theory 1: Political Origins of Court Strength

Judicial Review in U.S.

Electoral Theories (Electoral, Insurance, and Signaling Models)
  • Required reading (divide in two groups):
    o Ginsburg: “Introduction”, and Ch. 1-2
  • Recommended reading:

WEEK 7
Social Movements and Legal Mobilization Accounts
  • Required reading:
    o Epp, Ch. 1-2
    o Woods, Introduction and Ch. 1
• Recommended reading:

**WEEK 8**

**VI. Theory 2: Judicial Decision Making**

**Legal model**

• Required reading:
  o Selection from *Judges on Judging* [TBA]

• Recommended reading

**WEEK 9**

**Attitudinal Model**

• Required reading

• Recommended reading

**WEEK 10**

**Strategic Model**

• Required reading

• Required reading (divide into groups)
  o Epstein and Knight, Ch. 2-3
  o Ginsburg, Ch. 3 and 4 (pp. 65-105)


- Recommended reading

**WEEK 11**

Interest Groups & Social Movements Models

- Required reading
  - Teles, Introduction and Ch. 1

- Recommended reading:

Network Models: Structure/Agency and Rational/Cultural Debates

- Required reading
  - Fowler et al., TBA

- Recommended reading:
  - Katz et al. 2011 (TBA)

**WEEK 12**

**VII: Substantive Problems in Judicial Politics**

Court Building in Brazil and Mexico


Court Building in Eastern Europe and Russia
• Required reading:

WEEK 13

*** PAPER ABSTRACTS & OUTLINES DUE TUESDAY ***

Court Building in Asia
• Required reading:
  o Ginsburg: divide substantive chapters on China, Mongolia, or Korea (Ch. 5, 6, or 7)
• Recommended reading:

* THANKSGIVING BREAK November 21-25 *

WEEK 14

*** PEER COMMENTS ON ABSTRACTS & OUTLINES DUE TUESDAY ***

Law and Politics in Middle East and Southeast Asia

WEEK 15
Decision Making in Mexico
• Required reading:

TBA

Decision Making in Portugal
- Required reading:
  - 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)

Decision Making in Brazil
- Required reading:

WEEK 16

* LAST DAY OF CLASSES, TUE., DEC. 11 *
*** PAPERS DUE TODAY AT START OF CLASS ***

Review, evaluations, and course summary
New topics: international law and judicial politics; multi-level judicial politics; courts in authoritarian regimes; empirical analysis of law in general; statistics and social science in law

Recommended reading:

**Additional Resources:**

1. Supreme Court Blog: [www.scotusblog.com](http://www.scotusblog.com)
3. Law & Courts Section of American Political Science Association: [http://www.law.nyu.edu/lawcourts](http://www.law.nyu.edu/lawcourts)
11. 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