RPOS 541: FIELD SEMINAR IN PUBLIC LAW

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Location: HS 012  
Time: M 5:45-8:35  
Office Hours: (in HU 016)  
WF: 11:30-1:00 and by appointment

Course Description. This course offers a survey of the field of public law and approaches to studying public law in the social sciences. Public law conventionally consists of constitutional law, administrative law, criminal law, and public international law, i.e., those areas of law that govern the conduct of public institutions (state action). The course begins with these definitions of public law – establishing and problematizing the conceptual limits of the field, especially considering the place of private law – and situates the study of public law within broader concerns with democracy and development. We then review methodological issues and various approaches to studying public law, and proceed to examine existing research covering four major theoretical questions of persistent interest in the field: (1) Why build or empower legal institutions (e.g., courts)? (2) Once in place, how do actors activate legal institutions? (3) Once activated, why do legal institutions decide cases or respond the way they do? (4) Once legal institutions respond, what is the broader societal or systemic impact of this response? Each theoretical area familiarizes students with core works and authors, and provides a platform for considering recent work that is more comparative and international in nature, and that increasingly examines objects other than courts and other than formal institutions. Throughout, students are encouraged to revisit the relationships between law, democracy, and development.

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 library’s electronic databases. Where otherwise unavailable, I will provide materials for you.

POLICIES

Grading

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<tr>
<td>Participation</td>
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<td>Presentations on readings</td>
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<td>Book review</td>
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<td>Annotated outline</td>
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Participation. This is a graduate seminar, not a lecture class. Participation is essential.

Presentations. Each person will give two presentations over the course of the semester on the week’s readings. The presentations should summarize key points in the readings – including concepts, theories, methods, and findings – and generate questions for further discussion. For instance, how do the authors conceptualize public law? How do the authors measure judicial power? What is the main theoretical question? Is the causal argument clear? Does the evidence support the argument? Why or why not? I will also provide discussion questions prior to the week’s readings, and the presentations should respond to these questions. At the start of the semester, we will establish a schedule for presentations.

Book review. Choose any of the assigned books for the course and write a review, including a discussion of key concepts and the author’s definitions, theoretical framework, methods, and findings. Reviews should be no less than 1000 words (and no more than 1200), and are due before we meet to discuss the book you have chosen to review.

Annotated outline. Throughout the semester, you should keep a running list of all the required readings for the class, and at least one paragraph under each reading that summarizes our discussion in class of the reading. For instance, if there are five articles assigned in a week, you should have five entries in your outline and a minimum of one paragraph under each entry. I will ask that you submit these annotated outlines of the readings periodically during the semester. Your grade for this component of the class is for consistent progress towards the full annotated outline, which will include all but the last week of class.

Mock comp. At the start of the final week of class, I will distribute a mock comprehensive exam. Instead of the normal day to complete the exam, you will have one week in which to do so. The timing of the mock comp is not flexible. No extensions or rescheduling will be allowed.

Email. I expect you to check your email. You are responsible for material sent by email. However, if you have a lengthy 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 (Aug 26)
Introduction: overview of course; history of public law/judicial politics; introductions

- Readings:
  - Select a paper from APSA’s annual meeting and post a note about it to Blackboard discussion board.
    - Sections:
      - Law and Courts
      - Constitutional Law and Jurisprudence

WEEK 2 (Sep 2)
*** NO CLASS; Labor Day ***

WEEK 3 (Sep 9)
What is Public Law?

- Readings:

- Recommended:
    - Harry Stumpf, Martin Shapiro, David Danelski, Austin Sarat, David O’Brien
  - Segal and Spaeth. 2002. Ch. 1, “Supreme Court Policy Making”, and Ch.4, “A Political History of the Supreme Court”

○ 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)


○ UNDP Report 2004 (see above)


  ▪ Frances Stewart and Severine Deneulin. “Amartya Sen’s Contribution to Development Thinking.”
  ▪ Amartya Sen. “Response to Commentaries.”


WEEK4 (Sep 16)
Approaches to Public Law
  • Readings


**WEEK 5 (Sep 23)**

**Thinking Method(olog)ically**

Methodological Foundations: Thinking about the way you think

- **Required reading:**
  - A Science of Comparative Judicial Politics? An Exchange
    - SKIM this first piece
  - **Recommended reading:**
WEEK 6 (Sep 30)

- Required:

- Recommended:
  - 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
    - Cignarelli and Richards data
    - Ginsburg and Elkins data, Comparative Constitutions Project
  - See also references in Morris and Blake (2010) regarding corrosive effect of initial democratic openings

WEEK 7 (Oct 7) Alternative Explanations in Comparative Perspective

- Required reading:
  - Ingram, Matthew C. 2012. “Crafting Courts in New Democracies.” *Comparative Politics*

- Recommended:

From literature on accountability institutions and corruption, see references in Stephen Morris and Charles Blake, *Corruption and Politics in Latin America* (2010), regarding corrosive effect of initial democratic openings.

**Strategic Theories:**
- Pozas-Loyo, Andrea, and Julio Rios-Figueroa. 2010.
- Negretto, G. TBA
- Vanberg, G. TBA
- Fabrinni. TBA

**Ideational Theories:**
- Woods 2008, Introduction and Ch.1
- Woods and Hilbink 2009, Introduction to PRQ Symposium


**WEEK 8 (Oct 14)**

*** NO CLASS: COLUMBUS DAY ***

**WEEK 9 (Oct 21)**

**Activating Courts**

- **Required:**

- **Recommended:**

- **Additional recommended reading:**
McAdam, McCarthy, and Zald (1996)
- And social movement literature in general

WEEK 10 (Oct 28)
Decision Making 1: Legal and Attitudinal Models
- Required:
  - Segal and Spaeth. 2002:
    - ch1 (1-43); ch2 (44-85); ch6 (223-278); and ch7 (279-311)
- Recommended:
  - Tom Clark (TBA)
  - Annual Review piece by Charles Cameron and Nolan McCarty
  - Review Shapiro (1980), Ch. 3
  - Judges on Judging

WEEK 11 (Nov 4) Attitudinal Model, cont.
- Required:
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)

- Data exercise

**Recommended reading**

- Selection from Woods/Hilbink symposium in PRQ 2009

### WEEK 12 (Nov. 11) Strategic Model

- **Required:**

- **Recommended**
  - Review Ginsburg, Ch. 3 and 4 (pp. 65-105)
  - Review Segal and Spaeth, 86-114; 326-351

### Week 13 (Nov. 18)

**Public Opinion, Institutional Legitimacy, and Legal Influence**

- **Required:**
  - Gibson, James, and Gregory Caldeira. 1995. “The Legitimacy of Transnational Legal Institutions.” *AJPS*
  - Clark, Tom. 2009. “Separation of Powers, Court Curbing, and Judicial Legitimacy.” *AJPS*

- **Recommended:**
  - Bybee
  - Staton
  - Vanberg

### Week 14 (Nov 25)

**Do the Courts Matter? (Part 1)**

- **Required:**
  - Gerald Rosenberg, *The Hollow Hope* (second edition)
o Neal Devins, “Judicial Matters” (review of The Hollow Hope, first edition)

- Recommended:
  o Michael McCann, “Causal versus Constitutive Explanations”
  o Michael Klarman, “Brown and Lawrence (and Goodridge)”

**Week 15 (Dec. 2)**

**Do the Courts Matter? (Part 2)**

- Required:

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

**Week 16 (Dec. 9)**

**No class: mock comp distributed by today**

*** MOCK COMPS DUE BY END OF WEEK ***

**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](http://www.law.nyu.edu/lawcourts)


(10) World Treaty Index: [http://worldtreatyindex.com](http://worldtreatyindex.com)

(11) Computational Legal Studies: [http://computationallegalstudies.com](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