

PS 320: Topics in Comparative Politics
COMPARATIVE POLITICS OF LAW & COURTS

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June 9 – July 5
Dane Smith 127
MTWR: 11:40-2:10
CRN: 16309

Course Description. This course is about *comparative judicial politics* – how political actors shape legal systems and how legal systems, in turn, shape politics. The course introduces the main systems of law in the world, and proceeds to analyze how these systems interact with different political patterns of authoritarianism, democracy, and democratization. Thus, the course explores two main causal relationships: (1) the effect of politics on the functioning of legal systems (politics-to-courts influences), e.g., political interference in the independence of judges; and (2) the impact of the legal system on politics (courts-to-politics influences), e.g., constraints courts place on governments, or the democratizing influence of courts. The first half of the course emphasizes a theoretical understanding of the principal questions facing scholars of judicial politics, while the second half of the course highlights substantive, empirical problems of law and courts in different countries. 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 short research paper on a topic chosen by the student and an exam.

Pre-requisites. There are no pre-requisites for this course. However, *Introduction to Comparative Politics* (PS 220) is strongly recommended. Other recommended courses include *American Politics*, *Constitutional Law*, *Constitutional Rights*, and *Judicial Process*.

Requirements

Readings. The two main texts for this course are:

- 1) Jacob, Herbert, Erhard Blankenburg, Herbert M. Kritzer, Doris Marie Provine, and Joseph Sanders. 1996. *Courts, Law, and Politics in Comparative Perspective*. New Haven: Yale University Press.
- 2) Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. New York: Cambridge University Press.

Used and new copies of these books are available in the UNM Bookstore, and one copy of each book is on 2-hour reserve at Zimmerman Library. 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 from Electronic Reserves at <http://ereserves.unm.edu> (password: "lobo320"), or will be made available in class. You should expect to read about 50-80 pages for each class.

Daily Questions: Aside from the first day, you are responsible for bringing three questions related to the reading to **each class**. These questions should be considered a written

assignment (handwritten is ok). I will collect these questions at random **three times** during the course. If you are going to be absent, it is your responsibility to find out if I will be collecting questions that day. If I collect and do not receive questions from a student, she receives a zero for that particular day's assignment.

Participation. 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 class.

Paper. A 10-12 page research paper is required for this class. You must submit an abstract and outline for this paper on Thursday, **June 19 (Class 8)**. Please submit **two copies** of the abstract and outline – one is for me and one is for one of your colleagues. I will distribute the second copy in class the same day, and your comments on your colleague's abstract and outline are due the following Monday, **June 23 (Class 9)**. These comments can be handwritten on the copy itself, or you may type them up separately. The final paper is due on Wednesday, **July 2 (Class 15)**.

You will have the option of writing on one of three topics:

- (1) explain the legal and political context of a single country, discuss how legal and political factors interact to shape judicial outcomes, and evaluate against desired or normative standards;
- (2) 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
- (3) compare explanations of judicial reform, discuss strengths and weaknesses of each approach, and evaluate how they apply to a particular country or instance of reform.

Each paper should contain the following five sections: (1) research question; (2) brief literature review that states why this question is important and what others have said on the subject; (3) overview of theory that suggests answers to your question; (4) empirical section discussing the answers you found; (5) conclusion.

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

Exam. There will be a final exam on the last day of class.

Grading

- Daily Questions: 5%
- Abstract and Outline: 15%
- Comments on Abstract and Outline: 15%
- Research Paper: 35%
- Exam: 30%

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 10 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 10 minutes of class, or after 5pm on days there is no class). No late exams will be given.

Disabilities. Qualified students with disabilities who require appropriate academic accommodation 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

I. What do strong courts provide? Why do we care?

Class 1 (June 9): Introductions and overview of course

- Required reading:
 - Jacob et al., Ch. 1
 - UNDP Report 2004, pp. 102-118 on “Civil Citizenship”
- Recommended reading
 - Marshall, T.H. 1965. “Citizenship and Social Class.” In *Class, Citizenship, and Social Development*. New York: Doubleday.
 - UNDP Report 2004 (see above)
 - Ferejohn, John, Frances Rosenbluth, and Charles Shipan. 2007. “Comparative Judicial Politics.” In Carles Boix and Susan Stokes, eds. *The Oxford Handbook of Comparative Politics*. Oxford.
 - Domingo, Pilar, and Rachel Sieder, eds. 2001. *Rule of Law in Latin America: The International Promotion of Judicial Reform*. London: Institute for Latin American Studies.
 - Mainwaring, Scott, and Christopher Welna, eds. 2003. *Democratic Accountability in Latin America*. New York: Oxford University Press.
 - Gloppen, Siri, Roberto Gargarella, and Elin Skaar, eds. 2004. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. London: Frank Cass.
 - Diamond, Larry, Marc F. Plattner, and Andreas Schedler, eds. 1999. *The Self-Restraining State: Power and Accountability in New Democracies*. Boulder, CO: Lynne Rienner.
 - Brunello, Anthony R., and Lehrman, Kenneth F., III. 1991. “Comparative Judicial Politics: Case Studies of the Federal Republic of Germany and the Republic of India.” *Comparative Political Studies* 24(3): 267-298.
 - Jarquín, Edmundo, and Fernando Carrillo, eds. 1998. *Justice Delayed: Judicial Reform in Latin America*. Washington, D.C.: Inter-American Development Bank.
 - Eckstein, Susan, and Timothy Wickham-Crowley, eds. 2003. *What Justice? Whose Justice? Fighting for Fairness in Latin America*. Berkeley: University of California Press.

II. Thinking Method(olog)ically

Class 2 (June 10): Methodological Foundations

- Required reading:
 - Epstein, Lee, and Gary King. 2002. "The Rules of Inference." *University of Chicago Law Review* 69(1): 1-133. (only pages 1-114; skim footnotes).
- Recommended reading:
 - A Science of Comparative Judicial Politics? An Exchange
 - Tate, C. Neal and Stacia L. Haynie. 1993. "Authoritarianism and the Functions of Courts: A Time-Series Analysis of the Philippine Supreme Court, 1961-1987." *Law & Society Review* 27: 707.
 - Intro to Gilman-Tate-Haynie exchange. 1994. *Law & Society Review* 28(2): 353-54.
 - Gilman, Howard. 1994. "On Constructing a Scientific Comparative Judicial Politics: Tate and Haynie's 'Authoritarianism and the Functions of Courts'". *Law & Society Review* 28: 355-376.
 - Tate, C. Neal and Stacia L. Haynie. 1994. "Building a Scientific Comparative Judicial Politics and Arousing the Dragons of Antiscientism." *Law & Society Review* 28: 377-394.
 - Gerring, John. 2001. *Social Science Methodology: A Criterial Framework*. Cambridge: Cambridge University Press.

III. Legal and Institutional Background

Class 3 (June 11): Common Law and Civil Law systems

- Required reading:
 - Jacob et al., Ch. 2 & 4.
- Recommended Reading:
 - Merryman, John Henry. 2007. 3rd ed. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Palo Alto, CA: Stanford University Press.
 - Shapiro, Martin. 1981. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press.

IV. THEORY 1: What Explains the Strengthening of Courts?

Class 4 (June 12): Electoral Theories

- Required reading:
 - Ginsburg: "Introduction", and Ch. 1-2 (pp. 1-64)
- Recommended reading:
 - Finkel, Jodi S. 2005. *Judicial Reform as Political Insurance: Argentina, Mexico, and Peru in the 1990s*. South Bend: University of Notre Dame Press.
 - Gloppen, Siri, Roberto Gargarella, and Elin Skaar, eds. 2004. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. London: Frank Cass.

Class 5 (June 16): Pressure from International Agencies and Civil Society

- Required reading:
 - Carothers, Thomas. 1998. "The Rule of Law Revival." *Foreign Affairs* 77(2).

- Carothers, Thomas. 2007. "The 'Sequencing' Fallacy." *Journal of Democracy* 18(1).
- Recommended reading:
 - Domingo, Pilar, and Rachel Sieder, eds. 2001. *Rule of Law in Latin America: The International Promotion of Judicial Reform*. London: Institute for Latin American Studies.
 - Mendez, Juan, Paulo Sergio Pinheiro, and Guillermo O'Donnell, eds. 1999. *The (Un)Rule of Law and the Underprivileged in Latin America*. South Bend: University of Notre Dame Press.

V. THEORY 2: What Explains Judicial Decision-Making?

Class 6 (June 17): Legal model

- Required reading:
 - Segal, Jeffrey, and Harold Spaeth. 2002. "Models of Decision Making: The Legal Model." In Segal and Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press. Ch. 2: pp. 44-85.
- Recommended reading
 - Stumpf, Harry P. 1998. *American Judicial Politics*. 2nd ed. New Jersey: Prentice-Hall, Inc. Ch. 1-2.

Class 7 (June 18): Attitudinal Model

- Required reading
 - Segal and Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. pp. 86-97, 312-325.
 - Sunstein, Cass, David Schkade, and Lisa Ellman. 2004. "Ideological Voting on Federal Courts of Appeal: A Preliminary Investigation." *Virginia Law Review* 90. University of Virginia School of Law.
- Recommended reading
 - Posner, Richard. 2008. *How Judges Think*. Cambridge: Harvard University Press.
 - Sunstein, Cass, David Schkade, Lisa Ellman, and Andres Sawicki. 2006. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, D.C.: The Brookings Institution.

Class 8 (June 19): Strategic Model

- Required reading
 - Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press. pp. 1-21 (Introduction)
 - Ginsburg, Ch. 3 and 4 (pp. 65-105)
- Recommended reading
 - Epstein and Knight. 1998. *The Choices Justices Make*. Ch. 4-5.
 - Segal and Spaeth. 2002. pp. 97-109, 326-348.
 - Eskridge, William N., Jr. 1991. "Reneging on History? Playing the Court/Congress/President Civil Rights Game." *California Law Review* 79.

***** PAPER ABSTRACTS & OUTLINES DUE TODAY (Class 8) *****

Class 9 (June 23): Lobbying Model

- Required reading

- Epstein, Lee. 1985. *Conservatives in Court*. Knoxville, TN: University of Tennessee Press. Ch. 1, 5, and 6
- Epp, Charles. 1998. *Rights Revolutions: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press. pp. 1-25 (Ch. 1-2).
- Recommended reading:
 - McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
 - Sarat, Austin, and Stuart Scheingold. 2006. *Cause Lawyers and Social Movements*. Stanford: Stanford Law and Politics.
 - Dworkin, Ronald. 2007. "The Supreme Court Phalanx." *New York Review of Books*. Sept. 17, 2007.

***** COMMENTS ON ABSTRACTS & OUTLINES DUE TODAY (Class 9) *****

VI: Substantive Examples from Latin America and Asia

Class 10 (June 24): Judicial Independence in Argentina

- Required reading:
 - Iaryczower, Matías, Pablo T. Spiller, and Mariano Tommasi. 2002. "Judicial Independence in Unstable Environments: Argentina 1935-1998." *American Journal of Political Science* 46: 699-716.
- Recommended reading:
 - Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96(2).
 - Helmke, Gretchen. 2004. *Courts Under Constraints*. Cambridge: Cambridge University Press.
 - Chavez, Rebecca Bill. 2004. *Rule of Law in Nascent Democracies: Judicial Reform in Argentina*. Stanford: Stanford University Press.
 - Ríos-Figueroa, Julio. 2006. *Judicial Independence: Definition, Measurement, and Its Effects on Corruption. An Analysis of Latin America*. Doctoral Dissertation in Political Science at New York University.

Class 11 (June 25): Judicial Reform in Mexico

- Required reading:
 - Finkel, Jodi. 2005. "Judicial Reform as Insurance Policy: Mexico in the 1990s." *Latin American Politics & Society* 46(4).
 - Ríos-Figueroa, Julio. 2007. "Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002." *Latin American Politics & Society* 49(1).
- Recommended reading:
 - Domingo, Pilar. 2000. "The Politics of the Supreme Court in Mexico." *Journal of Latin American Studies* 32: 705-735.

Class 12 (June 26): Judicial Lobbying in Argentina and Mexico

- Required reading
 - Staton, Jeffrey K. 2007. "Lobbying for Judicial Reform: The Role of the Mexican Supreme Court in Institutional Selection." In Wayne A. Cornelius

and David A. Shirk, eds. *Reforming the Administration of Justice in Mexico*. ch. 12, pp. 273-298.

- Iaryczower, Spiller, and Tommasi. 2006. "Judicial Lobbying: The Politics of Labor Law Constitutional Interpretation." *American Political Science Review* 100(1).
- Recommended reading
 - Staton, Jeffrey K. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50: 98-112.

Class 13 (June 30): Judicial review in Asian Cases and Mexico

- Required reading:
 - Ginsburg: choose one substantive chapter on China, Mongolia, or Korea (Ch. 5, 6, or 7)
 - Magaloni, Beatriz, and Arianna Sanchez. 2006. "An Authoritarian Enclave? The Supreme Court in Mexico's Emerging Democracy." Paper prepared for 2006 meeting of APSA.
- Recommended reading:
 - Tate, C. Neal. 1997. "Courts and the Breakdown and Re-creation of Philippine Democracy: Evidence from the Supreme Court's Agenda." *International Social Science Journal* 49(2).
 - Magaloni, Beatriz. 2008. "Enforcing the Autocratic Political Order and the Role of Courts: The Case of Mexico." In Tom Ginsburg and Tamir Moustafa, eds. *Rule by Law: The Politics of Courts in Authoritarian Regimes*. Cambridge: Cambridge University Press.

Class 14 (July 1): Courts in Chile's Transition

- Required reading:
 - Hilbink, Lisa. 2008. "Agents of Anti-Politics: Courts in Pinochet's Chile." In Tom Ginsburg and Tamir Moustafa, eds. *Rule by Law: The Politics of Courts in Authoritarian Regimes*. Cambridge: Cambridge University Press. Ch. 4 (pp. 102-131). (E-Reserve)
- Recommended reading:
 - Hilbink, Lisa. 2007. *Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile*. New York: Cambridge University Press.
 - Couso, Javier. 2005. In Tom Ginsburg and Robert Kagan, eds. *Institutions and Public Law: Comparative Approaches*. New York: Peter Lang.

Class 15 (July 2): New directions of research; Conclusion; Review

- Judicialization of Politics
 - Required reading:
 - Ríos-Figueroa, Julio, and Matthew Taylor. 2006. "Institutional Determinants of the Judicialisation of Policy in Brazil and Mexico." *Journal of Latin American Studies* 38: 739-766.
 - Recommended reading:
 - Sieder, Rachel, Line Schjolden, and Alan Angell, eds. 2006. *The Judicialization of Politics in Latin America*. New York: Palgrave MacMillan.
 - Shapiro, Martin. 1994. "Judicialization of Politics in the United States" *International Political Science Review* 15: 101-112
 - Epstein and Knight. 1998. *The Choices Justices Make*. Ch. 6

- Other topics: disciplinary and subfield divisions; supranational courts; local courts in federal countries; alternative dispute resolution; indigenous courts; counter-reforms
- Review

***** PAPERS DUE TODAY (Class 15) *****

Class 16 (July 3): FINAL EXAM

End of Class

Additional Resources:

- (1) Supreme Court Blog: www.scotusblog.com
- (2) Empirical Legal Studies (ELS) Blog: www.elsblog.org
- (3) Law & Courts Section of American Political Science Association:
<http://www.law.nyu.edu/lawcourts>
- (4) Comparative Law Society: <http://www.iuscomp.org>
- (5) American Society of International Law: <http://www.asil.org/index.html>