

PLSC 213: Courts, Media, and Politics

Spring 2017

Professor: Miranda Yaver

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Office: 115 Prospect Street (Rosenkrantz Hall), #335

Class Time: Monday/Wednesday 9:00-10:15

Office Hours: Wednesday 1:30-3:30 or by appointment

The Supreme Court “may truly be said to have neither FORCE nor WILL, but merely judgment.” – Alexander Hamilton, Federalist 78

Introduction to the Course: This course is centrally aimed at introducing students to the judicial branch of the United States, which despite Hamilton’s famous declaration in *Federalist 78*, has proven in some cases to be a potent force in American policymaking over time. This is not a course on constitutional law, though we will discuss constitutional law as it applies to particular cases and aspects of judicial decisionmaking. Rather, we will study courts (the Supreme Court as well as appellate courts, though we will focus heavily on the Supreme Court) as political institutions and judges as political actors that interact with other key political institutions in American politics (*e.g.*, Congress, administrative agencies, the president, interest groups).

We will also dedicate a substantial aspect of the course examining the ways in which courts are covered in the media and the ways in which judges and justices might be impacted by those in the media and by public opinion more broadly. How do the media cover Supreme Court cases? How does that impact the subsequent discussion of politics and policy, and how we come to view courts and the judges who sit on them? And given what we have learned about judicial independence, but also certain constraints that judges nevertheless face, under what conditions might courts be more or less responsive to these other political institutions’s and the media’s engagement with its decisionmaking? By the end of the semester, students will have a firm grasp on the American judicial system’s role in the broader American politics landscape, and what we can make of the inherently interactive nature of media coverage of politics and policymaking.

BOOKS:

We will read most or all of the following four books:

- Bybee, Keith. 2007. *Bench Press: The Collision of Courts, Politics, and the Media*.
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*.

- Solberg, Rorie Spill & Eric N. Waltenberg. 2014. *The Media, the Court, and the Misrepresentation: The New Myth of the Court.*
- Zillis, Michael. 2015. *The Limits of Legitimacy: Dissenting Opinions, Media Coverage, and Public Responses to Supreme Court Decisions.*

There will also be a number of selections from the following text on courts, which is a valuable resource but is quite expensive. While I recommend purchasing it (or renting through Amazon), I will make an effort to scan and upload those readings:

- Murphy, Walter, C. Herman Pritchett, Lee Epstein, & Jack Knight. 2005. *Courts, Judges, and Politics, 6th edition.*

All other readings will be made available on Canvas. Students will be expected to come to class having read the material and being prepared to engage in the political and legal arguments that they present. There are many readings in the course, and I will notify you in advance which ones are skim-worthy. Only select slides will be posted online – most will not.

COURSE REQUIREMENTS:

Two short papers (4-5 pages): 10% each.

Long paper (12-15 pages, due the last class): 35%

- Pick a judicial decision of your choosing (any period, though public coverage will be more extensive over the course of recent years) and discuss its nexus and media/public response in light of the theories that we discuss in the course.

Final exam: 35%

- The first portion of the exam will consist of a set of IDs and multiple choice.
- One week in advance, I will distribute a list of 7 essay questions that are cumulative from across the course material. 5 of these 7 questions will appear on the exam, and students will write short essays on 4 of them. Students are encouraged to prepare outlines in advance (and in groups, if you wish), but may not bring notes to the exam itself. I will provide a review session before the exam, and you may discuss questions with me during office hours as well.

Attendance and participation: 10%

Papers shall be submitted as hard copies during (or before) class. Papers should be double-spaced in 12 point font with one-inch margins.

Final Course Grading: The final grade for the course will be assigned based on the following scale:

A: 93+%	A-: 90-92%	B+: 87-89%
B: 83-86%	B-: 80-82%	C+: 77-79%
C: 73-76%	C-: 70-72%	D+: 67-69%
D: 63-66%	D-: 60-62%	F: > 60%

Policy Regarding Late Assignments: It is imperative that students turn in work at the specified deadlines. Failure to do so will result in a third letter grade reduction per day late unless you have requested and received an extension in advance. Work will not be accepted at all more than one week late unless said extension was granted in advance. All students must sit for the final exam at the assigned day and time, with the only exception of university-approved absences.

All members of the academic community should be able to engage fully in the academic opportunities and services provided, regardless of disability status, and to that end accommodations to this course can be made if necessary. Please feel free to discuss with me any concerns you may have.

Statement on Academic Integrity: It is expected that all students will work in accordance with the student honor code. Thus, plagiarism, cheating, and receiving unauthorized assistance with the work in this course will not be tolerated. Should a student violate academic integrity in this class, the matter will be reported to the university administration. If you have questions about citations of sources, ask prior to submitting the given assignment. You may also refer to the Yale Writing Center: <http://ctl.yale.edu/writing/using-sources>

COURSE OUTLINE: (*Subject to change*)

Week 1: Introduction to the Study of Courts

Federalist Papers 78.

McCann, Michael. "How the Supreme Court Matters in American Politics: New Institutional Perspectives." In *The Supreme Court in American Politics*.

Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics*. 4: 261-276.

Week 2: The American Judicial System

Courts, Judges, and Politics, Ch. 3, 4, 6, 8.

Bickel, Alexander. *The Least Dangerous Branch*, Ch. 1. Establishment and Justification of Judicial Review.

Week 3: Judicial Power and Judicial Preferences

George, Tracey E. and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review*. 86(2): 323.

Spaeth, Harold. "The Attitudinal Model." In *Contemplating Courts*.

The Choices Justices Make, Ch. 2.

Pritchett, C. Herman. 1948. "The Roosevelt Court: Votes and Values." *American Political Science Review* 42(1): 53-67.

Cross, Frank B. 2003. "Decisionmaking in the U.S. Circuit Courts of Appeals." *California Law Review* 91(6).

Week 4: Legal Rules, Politics, and Precedent on the Supreme Court

Courts, Judges, and Politics, Ch. 11, 12.

Cross, Frank and Stephanie A. Lindquist. 2005. "Empirically Testing Dworkin's Chain Novel Theory: Studying the Path of Precedent." *New York University Law Review* 80: 1156.

Richards, Mark J. and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96:305-321.

Lax, Jeffrey R. and Kelly T. Rader. 2010. "Legal Constraints on Supreme Court Decision Making: Do Jurisprudential Regimes Exist?" *The Journal of Politics* 72(2): 273-84.

Gilman, Howard. 2001. "What's Law Got to do With It?" *Law & Social Inquiry* 26:465-504.

Week 5: Precedent on the Supreme Court, and Introduction to Strategic Judicial Decisionmaking

Courts, Judges, and Politics, Ch. 10.

Murphy, Walter F. 1962. "Marshaling the Court: Leadership, Bargaining, and the Judicial Process." *The University of Chicago Law Review*. 29: 640-672.

Shapiro, Ilya and Nicholas Mosvick. 2011. "Stare Decisis After *Citizens United*: When Should Courts Overturn Precedent." *Nexus: Chapman's Journal of Law and Policy*, vol. 16.

Spriggs, James and Thomas Hansford. "Explaining the Overruling of U.S. Supreme Court Precedent." *The Journal of Politics* 63(4): 1091-1111.

Lindquist, Stefanie, Virginia Hettinger, and Wendy Martinek. 2004. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the United States Courts of Appeals." *American Journal of Political Science* 48(1): 123-37.

Week 6: Strategic Decisionmaking, Case Selection, and Bargaining on the Court

The Choices Justices Make, Ch. 3.

Bonneau, Chris, Thomas H. Hammond, Forrest Maltzman, and Paul J. Wahlbeck. 2007. "Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court." *American Journal of Political Science* 51:890-905.

Caldeira, Gregory A. and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4): 1109-1127.

Crafting Law on the Supreme Court, Ch. 2-3.

Strategic Behavior and Policy Choice on the U.S. Supreme Court, Ch. 9.

Week 7: Courts in the Inter-Branch Setting

Harvey, Anna, and Barry Friedman. 2006. "Pulling Punches: Congressional Constraints on the Supreme Court's Constitutional Rulings, 1987-2000." *Legislative Studies Quarterly* 31(4): 533-62.

Hall, Matthew E.K. 2013. "The Semiconstrained Court: Public Opinion, the Separation of Powers, and the U.S. Supreme Court's Fear of Nonimplementation." *American Journal of Political Science*.

Segal, Jeffrey. 1997. "Separation of Powers Games in the Positive Theory of Congress and Courts." *American Political Science Review* 91:28-44.

Blackstone, Bethany. 2013. "An Analysis of Policy-Based Congressional Responses to the U.S. Supreme Court's Constitutional Decisions." *Law & Society Review* 47(1): 199-228.

Rosenberg, Gerald. 1992. "Judicial Independence and the Reality of Political Power," *Review of Politics* 54:369-88.

Moraski, Bryon and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science* 43(4): 1069-1095.

The Choices Justices Make, Ch. 4-5.

Week 8: Courts, Public Opinion, and Responsiveness to Public Preferences

Caldeira, Gregory. 1987. "Public Opinion and the U.S. Supreme Court: FDR's Court-Packing Plan." *American Political Science Review* 81(4): 1139-53.

Caldeira, Gregory A. 1986. "Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court." *American Political Science Review* 80(December): 1209-1226.

The Limits of Legitimacy, Ch. 1-2.

Davis, Richard and Vincent James Strickler. "The Invisible Dance: The Supreme Court and the Press." *Perspectives on Political Science*.

Giles Michael W., Blackstone Bethany, and Vining Richard L. Jr. 2008. "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making." *Journal of Politics* 70: 293-306

Franklin, Charles H. and Liane C. Kosaki. "Media, Knowledge, and Public Evaluations of the Supreme Court." In *Contemplating Courts*.

Week 9: Contemporary American Media

Delli Carpini, Michael and Bruce A. Williams. "Methods, Metaphors, and Media Research: The Uses of Television in Political Conversation." *Communication Research* 21:782 (1994).

Iyengar, Shanto. 2002. "The Effects of Media-Based Campaigns on Candidate and Voter Behavior: Implications for Judicial Elections." *Indiana Law Review* 35: 691-699.

Patterson, Thomas. 1997. "The News Media: An Effective Political Actor" *Political Communication*, Vol.14 (4).

Schudson, Michael. "The News Media as Political Institutions." *Annual Review of Political Science*. 5: 249-69.

Week 10: Polarization in the Media, and the Judiciary

Devins, Neal. 2012. "Party Polarization and Judicial Review: Lessons from the Affordable Care Act." *Northwestern University Law Review* 106(4): 1821.

Binder, Sarah and Forrest Maltzmann. "The Struggle to Shape the Federal Judiciary."

Primo, David M., Sarah A. Binder, and Forrest Maltzman. 2008. "Who Consents? Competing Pivots in Federal Judicial Selection." *American Journal of Political Science* 52 (July): 471-489.

Prior, Markus. 2013. "Media and Political Polarization." *Annual Review of Political Science*. 16: 101-27.

The Media, the Court, and the Misrepresentation, Ch. 1.

Tarr, G. Alan. "Politicizing the Process: The New Politics of State Judicial Elections." In *Bench Press*.

The Limits of Legitimacy, Ch. 3, 5, 6.

Week 11: The Media and Judicial Confirmation

The Media, the Court, and the Misrepresentation, Ch. 2.

Thomas, Dan, Craig McCoy, and Allan McBride. 1993. "Deconstructing the Political Spectacle: Sex, Race, and Subjectivity in Public Response to the Clarence Thomas/Anita Hill 'Sexual Harassment' Hearings." *American Journal of Political Science*. 37(3): 699-720.

Walker, John M. "Politics and the Confirmation Process: Thoughts on the Roberts and Alito Hearings." In *Bench Press*.

Alper, Joanne F. "Selecting the Judiciary: Who Should Be the Judge?" In *Bench Press*.

Dana Milbank. 2010. "In Kagan, Obama picks a Nominee, Not a Fight." *Washington Post*, May 11.

Ethan Bronner. 2012. "Robert Bork, 1927-2012: A Conservative whose Supreme Court Bid Set the Senate Afire." *NY Times* Dec 19.

Johnson, Timothy and Jason Roberts. 2004. "Presidential Capital and the Supreme Court Confirmation Process." *The Journal of Politics* 66(3): 663-83.

Totenberg, Nina. 1988. "The Confirmation Process and the Public: To Know or Not to Know." *Harvard L. Rev* 101: 1213.

Week 12: The Media and Landmark Cases

The Limits of Legitimacy, Ch. 8-9.

The Media, the Court, and the Misrepresentation, Ch. 3-4.

Lithwick, Dalia. "The Internet and the Judiciary: We Are All Experts Now." In *Bench Press*.

Haider-Markel, Donald P. et al. 2006. "Understanding Variations in Media Coverage of U.S. Supreme Court Decisions: Comparing Media Outlets in their Coverage of *Lawrence v. Texas*." *International Journal of Press*.

Week 13: Judicial Responsiveness to Opinion and Media

Baird Vanessa A. 2004. "The Effect of Politically Salient Decisions on the U.S. Supreme Court's Agenda." *The Journal of Politics* 66:755-72.

Mutz, Diana C. and Brandon Bartels. 2009. "Processes of Institutional Opinion Leadership." *The Journal of Politics*. 71(1): 249-61.

The Media, the Court, and the Misrepresentation, Ch. 5.

Clark, Tom S. 2009. "The Separation of Powers, Court-curbing and Judicial Legitimacy." *American Journal of Political Science* 53(4):971-989

McGuire, Kevin T. and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *The Journal of Politics* 66:1018-1035.