

**POLS – 4325 Special Topics in Law and Politics**  
**“Seminar in Judicial Politics”**  
**Department of Political Science**  
**University of Texas at El Paso**  
**TR: 1:30-2:50, LART 102**  
**Syllabus – Spring 2017**

Dr. Todd A. Curry  
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Office Hours: TR – 11:30 – 1:00pm or by appointment

**Course Description (from Undergraduate Catalog):**

A special listing for courses in the field of Law and Politics offered by the departmental faculty that are outside the purview of the above courses. Prerequisites: POLS 2310 and POLS 2311; and either POLS 2312 or junior standing.

**Soon to be Course Description (Fall 2017):**

An introduction to the scientific study of law, courts, and judicial processes. This course will examine the major controversies in the Political Science subfield of Law and Courts. Areas which may be covered include: judicial decision making, judicial selection, agenda-setting, and judicial implementation.

**Course Description:**

This is an undergraduate is in judicial politics, which is to say this is not a course in constitutional (or any other kind of) law. Rather, we will examine scholarly research on the political nature of the courts. This class will introduce students to the political science literature on various aspects of courts, judges, and legal systems. In particular, we will consider a variety of theoretical arguments made concerning the manner in which courts operate as well as the empirical evidence in support of these arguments. We will focus on the United States Supreme Court, as well as lower federal courts, and state courts

**Required Texts:**

McGuire, Kevin T., ed. 2012. *New Directions in American Politics*. Routledge.  
978-0415893329

**Recommended Texts:**

These are not required for the course, but will be invaluable in understanding the field of Judicial Politics

- Baum, Lawrence. 1998. *The Puzzle of Judicial Behavior*. University of Michigan Press  
978-0472083350
- Bonneau, Chris W. And Melinda Gann Hall. 2009. *In Defense of Judicial Elections*.  
Routledge. 978-0415991339

- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. 978-0521789714

### Required Readings

Other readings (unless otherwise noted) are can be accessed from JSTOR or Heinonline. Access is free on UTEP campus or at home via proxy. Some readings will have an (\*) beside them. These readings I will deliver via email/Blackboard.

<i>APSR American Political Science Review</i>	<i>AJPS American Journal of Political Science</i>
<i>MJPS Midwest Journal of Political Science</i>	<i>JOP Journal of Politics</i>
<i>JLEO Journal of Law, Economics, and Organization</i>	<i>Jud Judicature</i>
<i>JSJ Justice System Journal</i>	<i>PA Political Analysis</i>
<i>PRQ Political Research Quarterly</i>	<i>POP Perspectives on Politics</i>
<i>PB Political Behavior</i>	<i>L&amp;P Law and Policy</i>
<i>LSR Law and Society Review</i>	<i>SPPQ State Politics and Policy Quarterly</i>

### Evaluation

This class will be run as a seminar, and as such, will only be as successful as the preparation of its participants. You are expected to do all the readings for the week before our class meetings to facilitate a discussion from all participants involved.

Participation: 20%  
 Weekly reaction papers: 30% total  
 Book Review and Scholarly Critique: 20%  
 Final exam: 30%

### Grading Scale

The following numerical averages translate into final course grades:

90: A (4.0)  
 80-89: B (3.0)  
 70-79: C (2.0)  
 60-69: D (1.0)  
 –60: F (0.0)

**Reaction Papers:** Each week, beginning Week 2, you are responsible for turning in a reaction paper. **These are to be no more than 1 page, single spaced, at 12pt. font. They are due at 5pm the day BEFORE class (5pm on Monday). No late papers accepted.** Please email me these assignments as an attachment. The purpose of these papers is to teach to how to develop a single argument in a concise, articulate fashion. Content wise, this assignment is pretty flexible. They can be an alternative research idea, different explanation than what is claimed, a critique of the theory of the work, or other such reactions. They need to concern the readings of the week, and the best papers will address one issue or question from the current readings, as well as connect them to previous readings. The reason they are due the day before our class meeting is so they will allow me to structure the class, steering the discussion to what each of you found interesting. Understand, these papers are NOT summaries of the readings. They should critically engage the readings.

**Book Review and Scholarly Critique:** You will be required to review and critique a scholarly book in the area of Judicial Politics for completion of this course. The book will need to have been published

since the year 2005, and all choices must be approved by the instructor. **This choice is due to me (via email) by January 31<sup>st</sup>. Students who do not choose a book will be assigned one.** This assignment is to be at least 3 complete pages, but no more than 5. Half of the paper should summarize the main arguments of the book and discuss its contribution to the field, given your knowledge of relevant literature from the class. The second half of the paper should critique the book. A good example of what these assignments should look like, and also possible books to choose from, is available at the Law and Politics Book Review (<http://www.lpbr.net>). These reviews are **due in hand by April 27<sup>th</sup> in class.**

### **Academic Honesty and Integrity:**

Per UTEP policy: The University of Texas at El Paso prides itself on its standards of academic excellence. In all matters of intellectual pursuit, UTEP faculty and students must strive to achieve excellence based on the quality of work produced by the individual. In the classroom and in all other academic activities, students are expected to uphold the highest standards of academic integrity. Any form of scholastic dishonesty is an affront to the pursuit of knowledge and jeopardizes the quality of the degree awarded to all graduates of UTEP. It is imperative, therefore, that the members of this academic community understand the regulations pertaining to academic integrity and that all faculty insist on adherence to these standards.

Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, and any act designed to give unfair advantage to a student or the attempt to commit such acts. Proven violations of the detailed regulations, as printed in the Handbook of Operating Procedures (HOP) and available in the Office of the Dean of Students and the homepage of The Dean of Students at [www.utep.edu/dos](http://www.utep.edu/dos), may result in sanctions ranging from disciplinary probation, to failing a grade on the work in question, to a failing grade in the course, to suspension or dismissal, among others.

### **Special Needs:**

If you have a disability and need classroom accommodations, please contact The Center for Accommodations and Support Services (CASS) at 747-5148, or by email to [cass@utep.edu](mailto:cass@utep.edu), or visit their office located in UTEP Union East, Room 106. For additional information, please visit the CASS website at [www.sa.utep.edu/cass](http://www.sa.utep.edu/cass). *CASS' Staff are the only individuals who can validate and if need be, authorize accommodations for students with disabilities.*

### **Week 1. Introductions**

Jan 17 – Syllabus and expectations

Jan 19 – The Scientification of Political Science

- Pritchett, C. Herman. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values: 1937-1947*. Chps 1 & 2.

### **Week 2. The Controversy of Studying Politics Scientifically.**

Jan 24 – The Struggle Against Science

- Mendelson, Wallace. 1964. "The Untroubled World of Jurimetrics." *JOP* 26: 914-922
- Spaeth, Harold J. 1965. "Jurimetrics and Professor Mendelson: A Troubled Relationship." *JOP* 27: 875-80

Jan 26 – The Current Debate

- Pritchett, C. Herman. 1968. "Public Law and Judicial Behavior." *JOP* 30: 480-09.
- Glango, Victor E. and Craig R. Ducat. 1977. "Toward an Integration of Public Law and Judicial Behavior." *JOP* 39:41-72
- Friedman, Barry. 2006. "Taking Law Seriously." *POP* 4: 261-76.

### **Week 3. Theoretical Perspectives in Judicial Politics**

Jan 31 – Sources of Theoretical Explanation

- Baum, Lawrence. 1997. *Puzzle of Judicial Behavior*. CHPS 1&2 Available at <https://muse.jhu.edu/book/6316>

Feb 2 – Formulating Theory into Testable Hypotheses

- George, Tracey E. and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *APSR* 86: 323-37.
- Songer, Donald R. and Susan Haire. 1992. "Integrating Alternative Approaches to the Study of Judicial Voting: Obscenity Cases in the U.S. Courts of Appeals." *AJPS* 36: 963-82.
- Brace, Paul and Melinda Gann Hall. 1993. "Integrated Models of Judicial Dissent." *JOP* 55: 914-35.

### **Week 4. Attitudinal Theory and the SCAM**

Feb 7 – The SCAM

- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. CHP 1. at <http://assets.cambridge.org/97805217/83514/sample/9780521783514ws.pdf>

Feb 9 – Attitudinal Theory

- Segal, Jeffery A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *APSR* 83: 557-565.
- Epstein, Lee, Andrew D. Martin, Kevin M. Quinn, and Jeffery A. Segal. 2007. "Ideological Drift Among Supreme Court Justices: Who, When and How Important." *Northwestern University Law Review* Vol. 101: 1483.

### **Week 5. Attitudinal Theory: Criticism and Response**

Feb 14 – Stare Decisis and the Attitudinal Model

- Segal, Jeffrey A. and Harold J. Spaeth. 1996. "The Influence of *Stare Decisis* on the Votes of United States Supreme Court Justices." *AJPS* 40: 971-1003.
- Songer, Donald R. and Stefanie A. Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *AJPS* 40: 1049-63.
- Segal, Jeffrey A. and Harold J. Spaeth. 1996. "Norms, Dragons, and Stare Decisis: A Response." *AJPS* 40:
- Chapter 9 In McGuire

Feb 16 – The Legal Model

- Bartels, Brandon L. 2009. "The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court." *American Political Science Review* 103 (August): 474-495.
- Richards, Mark J. and Herbert Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96 (June): 305-320.

## **Week 6. Agenda Setting on the Courts**

Feb 21 – Agenda Setting Part 1

- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. Chapter 6. Pdf to come
- Baird, Vanessa A. 2004. “The Effect of Politically Salient Decisions on the U.S. Supreme Court’s Agenda.” *JOP* 66: 755-772

Feb 23 – Agenda Setting cont

- Black, Ryan C. and Ryan J. Owens. 2009. “Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence.” *JOP* 71: 1062-1075.
- Chapter 8 in McGuire
- Giles, Micheal W., Thomas G. Walker, and Christopher Zorn. 2006. “Setting a Judicial Agenda: The Decision to Grant En Banc Review in the U.S. Courts of Appeals.” *JOP* 68: 852-866.

## **Week 7. Strategic Behavior as a Counter-Paradigm**

Feb 28 – The Introduction of Strategic Behavior

- Rohde, David W. 1972. “Policy Goals, Strategic Choice, and Majority Opinion Assignments in the U.S. Supreme Court.” *MJPS* 16: 652-682.
- Epstein, Lee and Jack Knight. 2000. “Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead.” *PSQ* 53: 625-661.
- Johnson, Timothy R., James F. Spriggs, II, and Paul J. Wahlbeck. 2005. “Passing and Strategic Voting on the U.S. Supreme Court.” *LSR* 39: 349-378.

Mar 2 – Strategic Behavior Gets Complicated

- Chapter 10 in McGuire
- Bonneau, Chris W., 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.” *AJPS* 51: 890-905.
- Collins, Paul M., Jr. 2008. “The Consistency of Judicial Choice.” *JOP* 70: 861-873.

## **Week 8. Judicial Politics in the Lower Federal Courts**

Mar 7 – Decision-making on the lower federal courts

- Songer, Donald R. and Reginald S. Sheehan. 1992. “Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals.” *AJPS* 36: 235-58.
- Chapter 7 in McGuire
- Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. “The Hierarchy of Justice: Testing a Principal-Agent Model on Supreme Court-Circuit Court Interactions.” *AJPS* 38: 673-696.

Mar 9 – Lower Courts Continued

- Randazzo, Kirk A., Richard W. Waterman, and Jeffrey A. Fine. 2006. “Checking the Federal Courts: The Impact of Congressional Statutes on Judicial Behavior.” *JOP* 68 1003-14.
- Kastle, Jonathan P. 2011. “Hierarchical and Collegial Politics on the U.S. Courts of Appeals.” *JOP* 73: 345-361.

- Chapter 14 in McGuire

### **Week 10. Judicial Decision-Making in State Courts**

Mar 21 – An Intro to State Courts

- Brace, Paul, Melinda Gann Hall, and Laura Langer. 2001. “Placing State Supreme Courts in State Politics.” *SPPQ* 1: 81-108.
- Kritzer, Herbert M., Paul Brace, Melinda Gann Hall, and Brent T. Boyea. 2007. “The Business of State Supreme Courts, Revisited.” *Journal of Empirical Legal Studies* 4 (July): 427-439.
- Brace, Paul and Melinda Gann Hall. 1997. “The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice.” *Journal of Politics* 59 (November): 1206-1231.

March 23 – State Courts Complicated

- Savchak, Elisha Carol and A.J. Barghothi. 2007. “The Influence of Appointment and Retention Constituencies: Testing Strategies of Judicial Decisionmaking.” *State Politics and Policy Quarterly* 7 (Winter): 394-415.
- Chapter 3 in McGuire
- Chapter 4 in McGuire

### **Week 11. Judicial Selection and Retirement: Federal Courts**

Mar 28 – Federal Appointments

- Chapter 1 in McGuire
- Chapter 2 in McGuire
- Binder, Sarah A. and Forrest Maltzman. 2002. “Senatorial Delay in Confirming Federal Judges, 1947-1998.” *AJPS* 46: 190-199.

March 30 – Federal Retirements

- Crowe, Justin and Christopher F. Karpowitz. 2007. “Where Have You Gone, Sherman Minton? The Decline of the Short-Term Supreme Court Justice.” *POP* 5: 425-445.
- Zorn, J.W. Christopher and Steven R. Van Winkle. 2000. “A Competing Risks Model of Supreme Court Vacancies, 1789-1992.” *PB* 22: 145-166
- Hansford, Thomas G., Elisha Carol Savchak, and Donald R. Songer. 2010. “Politics, Careerism, and the Voluntary Departures of U.S. District Court Judges.” *American Politics Research* 38: 986-1014.

### **Week 12 Judicial Selection, Retention, and Retirement: State Courts**

Apr 4 – Judicial Selection Controversies

- Geyh, Charles Gardner. 2003. “Why Judicial Elections Stink.” *Ohio State Law Journal* 64 (1): 43-79.
- Hall, Melinda Gann. 2001. “State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform.” *APSR* 95: 315-330
- Bonneau, Chris W. and Damon M. Cann. “Campaign Spending, Diminishing Marginal Returns, and Campaign Finance Restrictions in Judicial Elections” *JOP* 73: 1267-1280

April 6 (No Class) – APRIL 11 – Judicial Selection Comparisons and Retirements

- Choi, Stephen J., G. Mitu Gulati, and Eric A. Posner. 2010. "Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather than Appointed Judiciary." *JLEO* 26: 290-336.
- Hall, Melinda Gann. 2001. "Voluntary Retirements from State Supreme Courts: Assessing Democratic Pressures to Relinquish the Bench." *JOP* 63:1112-1140
- Curry, Todd A. and Mark S. Hurwitz. 2016. "Strategic Retirement of Elected and Appointed Justices: A Hazard Model Approach." *JOP* 78: 1061-1075.

### **Week 13 External Influence on Courts: Public Opinion and Public Confidence**

April 13 – Confidence in the Courts

- Caldeira, Gregory A. 1986. "Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court." *APSR* 80: 1209-1226.
- Gibson, James L. and Gregory A. Caldeira. 2009. "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court." *JOP* 71: 429-441.
- Gibson, James L. and Michael J. Nelson. 2016. "Change in Institutional Support for the U.S. Supreme Court: Is the Court's Legitimacy Imperiled by the Decisions It Makes?" *Public Opinion Quarterly* 80: 622-641

April 18 – Public Opinion and its Effect

- Mishler, William and Reginald S. Sheehan. 1993. "The Supreme Court as a Counter-majoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *APSR* 87: 87-101.
- *APSR* Controversy. 1994. Helmut Norpoth and Jeffrey A. Segal; response by William Mishler and Reginald S. Sheehan. "Popular Influence on Supreme Court Decisions." *APSR* 88: 711-24.
- Chapter 13 in McGuire

### **Week 14. External Influences on Courts: Legislatures, Executives, Bureaucracies, and Interest Groups**

April 20 – Federal Courts

- Chapter 11 in McGuire
- Chapter 12 in McGuire
- Curry, Todd A. 2015. "A Look at the Bureaucratic Look of the Office of the Solicitor General." *Justice Systems Journal* 36 (February): 180-191.

April 25 – State Courts

- Langer, Laura and Paul Brace. 2005. "The Preemptive Power of State Supreme Courts: Adoption of Abortion and Death Penalty Legislation." *Policy Studies Journal* 33 (August): 317-340.
- Wilhelm, Teena. 2009. "Strange Bedfellows: The Policy Consequences of Legislative-Judicial Relations in the American States." *American Politics Research* 37 (January): 3-29
- Leonard, Meghan E. 2016. "State Legislatures, State High Courts, and Judicial Independence: A Examination of Court-Curbing Legislation in the States." *JSJ* 37: 53-62

### **Week 15. Comparative Courts**

April 27 – Comparative Courts 1

- Tate, C. Neal and Stacia L. Haynie. 1994. "Building a Scientific Comparative Judicial Politics and Arousing the Dragons of Antiscientism." *LSR* 28: 377-394.
- Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *APSR* 92: 343-358.
- Epp, Charles R. 2011. "The Support Structure as a Necessary Condition for Sustained Judicial Attention to Rights: A Response." *JOP* 73: 406-409.
- Urribarri, Raul A. Sanchez, Susanne Schorpp, Kirk A. Randazzo, and Donald R. Songer. 2011. "The Support Structure and Sustained Attention to Rights: A Rejoinder." *JOP* 73: 410-411.

May 2 – Comparative Courts 2

- Herron, Erik S. and Kirk A. Randazzo. 2003. "The Relationship Between Independence and Judicial Review in Post-Communist Courts." *JOP* 65: 422-38.
- Keith, Linda Camp, C. Neal Tate, and Steven C. Poe. 2009. "Is the Law a Mere Parchment Barrier to Human Rights Abuse?" *JOP* 71: 644-660.
- Randazzo, Kirk A., Douglas M. Gibler, and Rebecca Reid. 2016. "Examining the Development of Judicial Independence." *PRQ* 69: 583-593

May 4. Catch up Day. Also Review Day for Final Exam. Exam will be handing out at the beginning of class.

Final Exam is due at the start time of our final exam schedule in my hand. I will not accept them via email. (Thursday May 11<sup>th</sup> @ 1pm.)