INTRODUCTION

This seminar introduces the positive political theory of courts and law. It provides a unified framework for understanding the logical structure and evolution of law, the behavior of judges and litigants, the design and operation of judicial institutions including judicial hierarchies and collegial courts such as the U.S. Supreme Court, and the relationship between courts, administrative agencies, and legislatures. More than a survey of existing literatures, the course aims at providing a progressive way of thinking about law and courts, one that leads naturally to new theoretical and empirical research at the current frontiers of knowledge. The emphasis is on theory-building and theory-testing rather than empirical fact finding.

We do not anticipate offering this class in future years. Consequently, auditors are very welcome. However, students who have not completed some methods training (a semester of Game Theory and a semester of Statistics or the equivalent) should consult with the instructors before enrolling.

COURSE REQUIREMENTS

Readings

The readings for this class are deliberately lean (several comprehensive reading lists for Judicial Politics are available on line). However, the assignments are often gnarly in one way or another and require dedication and thought. Use the following to guide your efforts:

(**) What you must read if you hope to participate in or understand class

(*) Useful/stimulating readings that would make class more meaningful

(.) Supplemental readings that expand on issues touched on in class but aren’t essential

() If you are interested in this topic you really should read this, but perhaps not today.

Participation

The class tries to teach you not only foundational material (including much that is not readily available from any single source) but a way of thinking about courts and law. You must attend class if you are to get it. Preparation requires struggling with the readings and coming to class with questions and comments.
**WRITTEN ASSIGNMENTS**

You have three options, Options A, B, and C.

**Option A** – Write 4 short reaction papers to the readings and associated lectures. These should be relatively short, about 4-5 pages. They are due *one week after the class in question*; turn them in electronically to both instructors, and give a paper copy to Cameron. These papers should not summarize the readings and lecture; rather, they should respond critically and cleverly to the material in the readings and lecture.

**Option B** – Write two mini-research papers, about 10-12 pages in length. Mini-research papers should sketch a formal model extending those presented in class, or lay out a rigorous method for empirically implementing the ideas presented in one or more weeks. The analysis need not be complete but should be presented in sufficient detail to allow an evaluation. Literature reviews are forbidden. If you choose this option, the first paper is due after Spring Break, the second at the end of the semester.

**Option C** – Write a maxi-research paper, about 25+ pages in length, applying ideas from the course to some topic you are genuinely serious about researching. We will supply feedback. You should consult before starting. Option C papers are due at the end of the semester.

**AVAILABILITY OF READINGS**

The readings are available via links below, or on NYUCLASSES if an on-line version is not readily available.

If you have not taken the first year classes in a law school, you might want to read: E.E. Levi, *An Introduction to Legal Reasoning*. However, the material in the book will make more sense after the second week of class.

**SCHEDULE OF CLASSES & TOPICS**

*Week 1. Introduction.* Overview of course. What is law and what are courts. Law in stateless societies. Varieties of institutional forms. Intellectual history of studying courts, alternative approaches. Essence of PPT approach. 1/26

*Week 2. Case Space.* Modeling courts and law in case space. Mathematical representation of doctrine and judicial actions. Preferences over dispositions, rules, and policies. Common values (team) vs. private values (political) approaches. Utility over dispositions vs. utility over law. Trees as an alternative approach. 2/2

Week 4. *A Succession of Mortal Judges*. Team models and cascades. A political repeated game model of stare decisis. Empirical studies of precedent on appellate courts and the U.S. Supreme Court. 2/16


Week 6. *Hierarchy of Justice 2/More Team Perspectives*. Experimentation and optimal stopping. Learning in a judicial hierarchy. 3/1

Week 7. *Hierarchy of Justice 3/Principal-Agent Perspectives 1*. Tournaments. Strategic auditing for error correction. Strategic auditing for policy correction. 3/8

Spring Break 3/15


Note: Due to time, space, and mental limitations we do not plan to cover the following worthy topics: selection of judges, judicial federalism, court-curbing and judicial independence, courts and constitutional design, civil law systems in detail, and courts and economic growth.

**SYLLABUS & READINGS**

1. **INTRODUCTION**
   a. What is law and what are courts? Law in stateless societies.


Kaushak Basu, *Prelude to Political Economy*, Chapter 1 ()


b. Emergence and Varieties of Institutional Forms


Martin Shapiro, *Courts: A Comparative and Political Analysis*, Ch. 1 ()


c. Why Courts Matter

d. Theorizing Courts

i. Attitudinalism and Neo-Realism


2. CASE SPACE

a. Basics


b. Utility Functions for Case Space


c. Suggestive Empirical Evidence


d. An Alternative Representation of Legal Doctrine
3. A SINGLE IMMORTAL JUDGE
   a. Introduction to stare decisis
   Lewis Kornhauser, “Stare Decisis” *New Palgrave Dictionary of Law & Economic* (**)

   b. Dynamics II: Precedent as Hysteresis
   Introduction to Inventory Theory
   http://www.me.utexas.edu/~jensen%20/ORMM/supplements/units/inventory/inventory.pdf
   http://www.jstor.org/stable/724210

   c. Dynamics III: Learning
   Giri Parameswaran, “Ruling Narrowly and Broadly: Learning, Experimentation, and Law Creation” ()
   http://www.haverford.edu/economics/faculty/gparames//Papers/Parameswaran-RulingNarrowly.pdf

4. A SUCCESION OF MORTAL JUDGES
   a. Team Model: Precedential Cascades

   b. A Quasi-Team Model (with heresthetics)

   c. A Political Repeated Game Model of Stare Decisis in Case Space
   Cameron and Kornhauser, “Stare Decisis as an Ideological Log-roll,” working paper. (**)

   d. A (Political) Overlapping Generations Model (sort of)

   e. Some Empirics about the US Supreme Court
   Jeffrey Segal and Harold Spaeth, “The Influence of Stare Decisis on the Votes of U.S. Supreme Court Justices” 40 *AJPS* 971-1003 (1996) ()
5. **The Hierarchy of Justice 1: Team Perspectives**
   
a. **Overviews of the Judicial Hierarchy**
   
   
   

   b. **Introduction to Judicial Teams**
   
   

   c. **Optimal Hierarchy and Error Correction (the 3 Tier Theorem)**
   
   
   [http://www.vanderbilt.edu/econ/faculty/Wooders/APET/Pet2004/Papers/Appeals%20mechanisms.pdf](http://www.vanderbilt.edu/econ/faculty/Wooders/APET/Pet2004/Papers/Appeals%20mechanisms.pdf)

6. **Hierarchy of Justice: More Team Perspectives**
   
a. **Experimentation & Optimal Stopping**
   
   

   b. **Beim Learning Model**
   
   
   [http://www.nyu.edu/econ/user/bisina/advocates.pdf](http://www.nyu.edu/econ/user/bisina/advocates.pdf)
   
   Deborah Beim, "Learning in the Judicial Hierarchy," working paper, Yale University (variant of "Advocates") (*)
   
   [http://deborahbeimcommons.yale.edu/files/BeimJMP1.pdf](http://deborahbeimcommons.yale.edu/files/BeimJMP1.pdf)

7. **The Hierarchy of Justice 3: Principal-Agent Perspectives**
   
a. **Introduction to PA Models of the Judicial Hierarchy**
   
   Cameron and Kornhauser, “The Hierarchy of Justice: Principals and Agents” Princeton manuscript 2014

   b. **Tournaments**
   
   
   

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c. Strategic auditing for error correction


d. Strategic auditing for policy

8. HIERARCHY OF JUSTICE 3, MORE PA

a. The Rule of Four

b. Whistle-blowing


c. En Banc Review


9. COLLEGIAL COURTS 1: BARGAINING

a. Intellectual Antecedents

Segal, Jeffrey, and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press: New York. Chapters 1, 2, 3 (skip the Separation of Powers section for now), Chapter 7 (pp. 288-311) and Chapter 8 (again skip the Separation of Powers section). ()

Epstein & Knight *The Choices Justices Make*. ()

b. Using Scaling to Test and Reject the MVT/Stylized Facts for Theorists

http://userwww.service.emory.edu/~tclark7/CaseSpecificPreferences.pdf

c. Majority Median Approach

http://people.duke.edu/~gsv5/2012AJPS.pdf

Cameron and Kornhauser, "MCC3" (*)

10. COLLEGIAL COURTS 2: MORE BARGAINING

a. Sequential Bargaining Approach

Cameron & Kornhauser, "Bargaining on Appellate Courts" working paper, Princeton 2013 (**)

b. Common Law Collegial Adjudication: The Median Voter Theorem in Case Space


c. Team Approaches to Collegial Courts (Civil Law Apex Courts)


11. COLLEGIAL COURTS 3: PEER EFFECTS

a. Historical Antecedents


b. Peer effects in non-median models of collegial courts

Review “MCC3” and “Sequential Bargaining” (), noting how changing non-median members changes policy outputs

c. Dissent Aversion Approach

Fischman, “Decision-making Under a Norm of Consensus,” SSRN paper (**)

d. Deliberation (information) based Approach

e. Empirical Studies
Josh Fischman, “Interpreting Circuit Court Voting Patterns.” Forthcoming JLEO (2013) (*)
http://jleo.oxfordjournals.org/content/early/2013/01/16/jleo.ews042.short
http://jleo.oxfordjournals.org/content/20/2/299.full.pdf

12. COLLEGIATE COURTS 4: JUDGMENT AGGREGATION
a. Historical Antecedents

b. Overview of a New Social Choice Problem
http://personal.lse.ac.uk/list/pdf-files/ja‐intro.pdf

c. Applications to Courts
http://journals.cambridge.org/action/displayFulltext?type=1&fid=5962240&jid=JOP&volumeld=71&issueld=03&aid=5962232

13. STATUTORY INTERPRETATION
a. Background: What is statutory interpretation?
Levi, Introduction to Judicial Reasoning, chapter on Mann Act Dog in park/leash
Stephenson, review article

b. The Canonical SOP Model (the Ferejohn-Shipan Model)

c. The DC Circuit Game
d. Statutes as “Incomplete Contracts” with Delegation to Agencies and Courts
A reading on incomplete contracts?
A reading on delegation?
Landes & Posner?

14. JUDICIAL REVIEW

a. Overview of judicial review

b. How is judicial review different from statutory interpretation?
(*)http://www.jstor.org/stable/764886?seq=1#page_scan_tab_contents

c. Public Opinion Model

d. Information Models

e. Rational Legislative Deference Model
Tom Clark, “The Separation of Powers, Court Curbing and Judicial Legitimacy,” American Journal of
Other Material Cut in 2016 Version


1. **BLIND JUSTICE**
   a. A Machine That Goes Of Itself
   Priest-Klein

   b. Dynamics I: Litigants and Evolution of the Law (Models of Blind Justice)
   Robert Cooter & Lewis Kornhauser, "Does Litigation Improve the Law without the Help of Judges?"
   *9 J Legal Stud* 139-163 (1980) (*)

1. **SCALING COURTS:** TOWARD STRUCTURAL ESTIMATION OF MODELS OF COLLEGIAL COURTS
   a. Historical Antecedents
   C. Herman Pritchett, *The Roosevelt Court* ()
The Judicial Mind

   b. Scaling as Structural Estimation
   Clinton, Jackman, Rivers, “The Statistical Analysis of Roll Call Data,” please use the unpublished working paper version which is more provocative than the published APSR version, and includes judicial examples. Section 3 is key. (**)  
   [http://politics.as.nyu.edu/docs/IO/4756/jackman_nemp.pdf](http://politics.as.nyu.edu/docs/IO/4756/jackman_nemp.pdf)

   c. Scaling Dispositional Votes
   Tom Clark, “A Simple Structural Model of Judicial Scaling Using Dispositional Votes” (*)

   d. Using Information Beyond Votes: Citations & other
   [http://userwww.service.emory.edu/~tclark7/doctrinespace.pdf](http://userwww.service.emory.edu/~tclark7/doctrinespace.pdf)
e. Statistical Models of Doctrine
http://www.jstor.org/stable/1955796
http://www.princeton.edu/~jkastell/trees.html

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Tokyo & New York City
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