Introduction

This course provides an introduction to the political science of law and courts, a branch of the discipline known as judicial politics. This is not a course on constitutional law, and the focus will not be on doctrinal analysis or close reading of cases (though we will discuss cases to illustrate and examine the topics of the course). Instead, we will evaluate courts as political institutions and judges as political actors. The topics we will study include: what courts do; different legal systems; the operation of legal norms; the U.S. judicial system; the power of courts; constraints on judicial power; judicial review; the origin of judicial institutions; how and why Supreme Court justices make decisions; case selection; conflict between the Court and the other branches of government; decision making and conflict within the judicial hierarchy; the place of courts in American political history; and judicial appointments. Our main focus will be the American legal system and U.S. federal courts, but we will discuss other courts and legal systems as well.

Course Requirements

Your grade in this class will be based on the following:

- Midterm Exam: 25%
- Final Exam: 35%
- Precept Participation: 15%
- Research Paper: 25%

While attendance is not required for lectures, it will be very difficult to do well in the class without attending lecture. In addition, I will try to make lecture as interactive as possible. Participation in lecture will also be appreciated. If you have a question at any time, please ask it.

Exams

The midterm exam will be given in class on March 9th (the last class before Spring Break). The final exam will be given during the university exam period in May. Makeup exams will not be given except under extreme circumstances and with official university permission.
Final Paper

Each student will be responsible for writing a research paper, the goal of which is to study the internal politics behind a Supreme Court decision. You will select a case for which relevant information is available. You will then make use of appropriate resources to illustrate and explore the interactions of the justices leading up to their final decisions and opinions, showing how they bargained over policy and/or how they aggregated their preferred legal rules. More details on the paper can be found on Blackboard.

The paper is due on April 29th. However, you should start thinking about potential cases early in the semester. We will cover the material you will apply in the paper immediately after Spring Break—at that point you should begin working in earnest on the paper.

Late papers will be penalized 10% for every 24 hours late, unless there is a legitimate, documented excuse.

Precepts

Attending one of the precept sections is mandatory, and all students will be expected to contribute to each week’s discussion. Please note that there are separate readings for the lectures and the precepts, though generally the topics will overlap. It is essential that you do the readings for each week’s precepts. If you have not done them, I would prefer that you not attend precept that week. To be clear, your grade will be negatively affected by not attending precept. But the penalty will be the same as showing up and not participating at all. At the start of each precept I will give students the opportunity to ask questions about that week’s lectures. So, if you are confused about something, please ask for clarification.

Participation in precept will determine 15% of your overall grade in the class.

Books and Readings

The following books are available at Labyrinth Books:


Unfortunately, each of these books is overpriced if purchased new. Fortunately, several used copies of each book appear to be available on websites such as amazon.com, www.fetchbook.info, and www.abebooks.com at lower prices—you are welcome to buy a used edition. Also, the 5th edition of MPEK is very similar to the 6th edition: if you purchase the 5th edition, I have indicated in the class readings where the two differ. There are also additional readings that are available through Blackboard [BB]; the “Course Materials” section contains zip files of the lecture and precept readings, respectively.
Dates to Remember

- March 9th: Midterm exam
- April 29th: Final paper due
- During exam period in May: Final exam

Class Schedule and Readings

Note that this schedule is subject to change, though you will be notified of any changes well in advance.

Week 1 (2/1 & 2/3): Why Study Courts as Political Institutions?

- Lecture
  - MPEK: 1.0—1.5, 2.1 (“.0” for an MPEK reading means the entire part of the chapter before the readings; e.g., for Ch. 1, this is pp. 3-20.)
- Precept
  - No precept this week


- Lecture
  - MPEK: 2.0
  - PRIMER: Ch. 1
- Precept
  - Posner, “Foreword: A Political Court” [BB] (We will focus on pp. 31-84, but feel free to read entire paper.)

Week 3 (2/15 & 2/17): The American Judicial System

- Lecture
  - MPEK: 3.0, 3.1-3.5, 6.0
  - PRIMER: Chs. 2 and 4
- Precept
  - New York Times series on American Exceptionalism [BB]
**Week 4 (2/22 & 2/24): Judicial Power and Judicial Preferences**

- **Lecture**
  - MPEK: 7.0, 8.0, 9.0
  - PRIMER: Ch. 3
  - Ward Farnsworth, “Ex ante and ex post” [BB]

- **Precept**

**Weeks 5-6 (2/29, 3/2 & 3/7): Legal Rules and Law, Politics and Precedent on the U.S. Supreme Court**

- **Lecture**
  - MPEK: 10.0, 11.0, 12.0, 12.2, 12.3, 12.4
  - PRIMER: Ch. 5
  - Richard Posner, “What do Judges Maximize?” [BB] (pp. 135-144 are optional)
  - Ward Farnsworth, “Rules & Standards” [BB]

- **Precept (3/2)**
  - Rule exercises/Midterm review—no additional readings

**MIDTERM: 3/9**

- No precepts this week

**SPRING BREAK: 3/14 & 3/16**

**Week 7 (3/21 & 3/23): Precedent Continued and an Introduction to the Strategic Account**

- **Lecture**
  - MPEK: 10.5, 10.6, 10.7 [10.6, 10.7, 10.8 in 5th ed.], 13.0
  - CHOICES: Ch. 1

- **Precept**
  - MPEK: 10.1

**Week 8 (3/28 & 3/30): The Strategic Account Continued: Case Selection and Bargaining on the U.S. Supreme Court**

- **Lecture**
  - CHOICES: Ch. 2-3

- **Precept**
  - Perry, *Deciding to Decide*, excerpts [BB]
Week 9 (4/4 & 4/6): Bargaining on the Supreme Court Continued

- Lecture
  - CHOICES: Ch. 4
  - Clark, “Bargaining and Opinion Writing on the U.S. Supreme Court.” [BB]
  - MPEK: 13.6-13.7 [13.8-13.9 in 5th ed.]
- Precept
  - No precepts this week (I will be out-of-town for a political science conference).

Week 10 (4/11 & 4/13): The Judicial Hierarchy

- Lecture
  - Farnsworth & Posner, “Agency” [BB]
  - MPEK: 7.1, 8.3, 13.3
  - Benesh & Martinek, “Lower Court Compliance with Precedent.” [BB]
  - Liptak & Blumenthal, “Death Sentences in Texas Cases Try Supreme Court’s Patience” [BB]
- Precept
  - In-class experiments, no additional readings

Week 11 (4/18 & 4/20): The Judicial Hierarchy Continued

- Lecture
  - Kastellec, “Hierarchical and Collegial Politics on the U.S. Courts of Appeals” [BB]
- Precept
  - Coffin, “Ways of a Judge” (excerpts) [BB]


- Lecture
  - CHOICES: Ch. 5
  - MPEK: review 8.0, 4.0, 4.5 [4.4 in 5th Edition]
  - OPTIONAL: MPEK: 14.0
- Precept
  - Paper presentations