

Universität Hamburg
Department of Social and Economic Sciences
Political Science
24-204.11 Comparative Judicial Politics
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Comparative Judicial Politics

Syllabus Fall 2019

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Course Description

We rely increasingly on national and international courts and judges to resolve moral dilemmas, political debates, and questions of public policy. In this course we will explore the how legal institutions, courts, and judges influence political and economic life.

The course is roughly divided into four parts: 1) legal systems and their political and economic effects 2) courts as political actors 3) models of judicial behavior 4) international courts

Examination

- Participation in a group project
- Short presentation of group work
- Final paper

Group Projects

Schedule

Introduction

17.10.2019: Course Organization

24.10.2019: Studying Courts: Why and How?

- Hirschl, R. (2008). The judicialization of mega-politics and the rise of political courts. *Annual Review of Political Science*, 11, 93–118
- Sumption, J. (2019). Lecture 1: Law's expanding empire. *The Reith Lectures 2019: Law and the Decline of Politics*. Accessed 14.10.2019
- Ferejohn, J., Rosenbluth, F., & Shipan, C. R. (2009). Comparative judicial politics. In C. Boix & S. C. Stokes (Eds.), *The Oxford Handbook of Comparative Politics* (pp. 728–751). Oxford University Press
- Stone Sweet, A. (2000). *Governing With Judges: Constitutional Politics in Europe*. Oxford University Press, Chapter 1, 1-32
- Kapiszewski, D. & Taylor, M. M. (2008). Doing courts justice? studying judicial politics in latin america. *Perspectives on Politics*, 6(4), 741–767
- Friedman, B. (2006). Taking law seriously. *Perspectives on Politics*, 4(2), 261–276

Block I: Legal Systems

31.10.2019: No session

07.11.2019: Common Law vs Civil Law

- Siems, M. (2018). *Comparative Law*. Cambridge University Press, Chapter 3, 41-71
- Merryman, J. H. & Pérez-Perdomo, R. (2007). *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press, 3rd edition, Chapters 1-6, 1-39
- Gennaioli, N. & Shleifer, A. (2007). The evolution of common law. *Journal of Political Economy*, 115(1), 43–68
- Rubin, P. H. (1977). Why is the common law efficient? *The Journal of Legal Studies*, 6(1), 51–63

14.11.2019: The Economic Effects of Legal Systems

- La Porta, R., Lopez-de Silanes, F., Shleifer, A., & Vishny, R. W. (1998). Law and finance. *Journal of Political Economy*, 106(6), 1113–1155
- Glaeser, E. L. & Shleifer, A. (2002). Legal origins. *The Quarterly Journal of Economics*, 117(4), 1193–1229
- La Porta, R., Lopez-de Silanes, F., & Shleifer, A. (2008). The economic consequences of legal origins. *Journal of Economic Literature*, 46(2), 285–332

Block II: Courts as Political Actors

21.11.2019: Judicial Independence

Case study: Poland and Hungary

- Helmke, G. & Rosenbluth, F. (2009). Regimes and the rule of law: Judicial independence in comparative perspective. *Annual Review of Political Science*, 12, 345–366
- Vanberg, G. (2000). Establishing judicial independence in west germany: The impact of opinion leadership and the separation of powers. *Comparative Politics*, (pp. 333–353)
- Helmke, G. (2002). The logic of strategic defection: Court–executive relations in argentina under dictatorship and democracy. *American Political Science Review*, 96(2), 291–303
- Ramseyer, J. M. & Rasmusen, E. B. (2001). Why are japanese judges so conservative in politically charged cases? *American Political Science Review*, 95(2), 331–344
- Iaryczower, M., Spiller, P. T., & Tommasi, M. (2002). Judicial independence in unstable environments, argentina 1935-1998. *American Journal of Political Science*, (pp. 699–716)

28.11.2019: Judicial Power and Compliance

Case study: Worcester vs Georgia

- Vanberg, G. (2001). Legislative-judicial relations: A game-theoretic approach to constitutional review. *American Journal of Political Science*, 45(2), 346–361
- Vanberg, G. (2005). *The Politics of Constitutional Review in Germany*. Cambridge University Press
- Staton, J. K. & Vanberg, G. (2008). The value of vagueness: delegation, defiance, and judicial opinions. *American Journal of Political Science*, 52(3), 504–519
- Vanberg, G. (2015). Constitutional courts in comparative perspective: A theoretical assessment. *Annual Review of Political Science*, 18, 167–185

Block III: Models of Judicial Behavior

05.12.2019: Models of Judicial Behavior

- Segal, J. A. & Cover, A. D. (1989). Ideological values and the votes of u.s. supreme court justices. *American Political Science Review*, 83(2), 557–565
- Segal, J. A. (1997). Separation-of-powers games in the positive theory of congress and courts. *American Political Science Review*, 91(1), 28–44
- Segal, J. A. & Spaeth, H. J. (2002). *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press
- Posner, R. A. (2008). *How Judges Think*. Harvard University Press, Ch. xx
- Martin, A. D. & Quinn, K. M. (2007). Assessing preference change in the u.s. supreme court. *Journal of Law, Economics, and Organization*, 23, 303–325
- Epstein, L. & Knight, J. (2013). Reconsidering judicial preferences. *Annual Review of Political Science*, 16, 11–31
- Epstein, L. & Knight, J. (1997). *The Choices Justices Make*. Sage, 1-21 and 138-181
- Posner, R. A. (1993). What do judges and justices maximize?(the same thing everybody else does). *Supreme Court Economic Review*, 3, 1–41
- Epstein, L., Landes, W. M., & Posner, R. A. (2011). Why (and when) judges dissent: A theoretical and empirical analysis. *Journal of Legal Studies*, 3(1), 101–137

12.12.2019: No session

19.12.2019: Gender and Judging

- Peresie, J. (2005). Female judges matter: Gender and collegial decisionmaking in the federal appellate courts. *Yale Law Journal*, 114(7), 1759–1790
- Boyd, C. L., Epstein, L., & Martin, A. D. (2010). Untangling the causal effects of sex on judging. *American Journal of Political Science*, 54(2), 389–411
- Moyer, L. P. & Haire, S. B. (2015). Trailblazers and those that followed: Personal experiences, gender, and judicial empathy. *Law & Society Review*, 49(3), 665–689

09.01.2020: Courts and Media

- Lim, C. S., Snyder Jr, J. M., & Strömberg, D. (2015). The judge, the politician, and the press: Newspaper coverage and criminal sentencing across electoral systems. *American Economic Journal: Applied Economics*, 7(4), 103–35

- Linos, K. & Twist, K. (2016). The supreme court, the media, and public opinion: Comparing experimental and observational methods. *The Journal of Legal Studies*, 45(2), 223–254

Block IV: International Courts

16.01.2020: International Justice and International Agreements

- Carrubba, C. J. (2005). Courts and compliance in international regulatory regimes. *The Journal of Politics*, 67(3), 669–689
- Alter, K. J. (2014). *The New Terrain of International Law: Courts, Politics, Rights*. Princeton University Press, Ch. 2
- Helfer, L. R. & Voeten, E. (2014). International courts as agents of legal change: Evidence from LGBT rights in Europe. *International Organization*, 68(1), 77–110
- Powell, E. J. & Mitchell, S. M. (2007). The international court of justice and the world's three legal systems. *The Journal of Politics*, 69(2), 397–415
- Staton, J. K. & Moore, W. H. (2011). Judicial power in domestic and international politics. *International Organization*, 65(3), 553–587
- Carrubba, C. J. & Gabel, M. J. (2015). *International courts and the performance of international agreements: A general theory with evidence from the European Union*. Cambridge University Press, Chapters 1 and 2

23.01.2020: European Integration: The ECJ

- Hix, S. & Höyland, B. (2011). *The Political System of the European Union*. Macmillan, 3 edition
- Carrubba, C. J., Gabel, M., & Hankla, C. (2008). Judicial behavior under political constraints: Evidence from the European court of justice. *American Political Science Review*, 102(4), 435–452
- Stone Sweet, A. & Brunell, T. (2012). The European court of justice, state noncompliance, and the politics of override. *American Political Science Review*, 106(1), 204–213
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30.01.2020: Group Presentations

References

- [1] Alter, K. J. (2014). *The New Terrain of International Law: Courts, Politics, Rights*. Princeton University Press.
- [2] Boyd, C. L., Epstein, L., & Martin, A. D. (2010). Untangling the causal effects of sex on judging. *American Journal of Political Science*, 54(2), 389–411.
- [3] Carrubba, C. J. (2005). Courts and compliance in international regulatory regimes. *The Journal of Politics*, 67(3), 669–689.
- [4] Carrubba, C. J., Gabel, M., & Hankla, C. (2008). Judicial behavior under political constraints: Evidence from the European Court of Justice. *American Political Science Review*, 102(4), 435–452.
- [5] Carrubba, C. J. & Gabel, M. J. (2015). *International courts and the performance of international agreements: A general theory with evidence from the European Union*. Cambridge University Press.
- [6] Epstein, L. & Knight, J. (1997). *The Choices Justices Make*. Sage.
- [7] Epstein, L. & Knight, J. (2013). Reconsidering judicial preferences. *Annual Review of Political Science*, 16, 11–31.
- [8] Epstein, L., Landes, W. M., & Posner, R. A. (2011). Why (and when) judges dissent: A theoretical and empirical analysis. *Journal of Legal Studies*, 3(1), 101–137.
- [9] Ferejohn, J., Rosenbluth, F., & Shipan, C. R. (2009). Comparative judicial politics. In C. Boix & S. C. Stokes (Eds.), *The Oxford Handbook of Comparative Politics* (pp. 728–751). Oxford University Press.
- [10] Friedman, B. (2006). Taking law seriously. *Perspectives on Politics*, 4(2), 261–276.
- [11] Gennaioli, N. & Shleifer, A. (2007). The evolution of common law. *Journal of Political Economy*, 115(1), 43–68.
- [12] Glaeser, E. L. & Shleifer, A. (2002). Legal origins. *The Quarterly Journal of Economics*, 117(4), 1193–1229.
- [13] Helfer, L. R. & Voeten, E. (2014). International courts as agents of legal change: Evidence from LGBT rights in Europe. *International Organization*, 68(1), 77–110.
- [14] Helmke, G. (2002). The logic of strategic defection: Court–executive relations in Argentina under dictatorship and democracy. *American Political Science Review*, 96(2), 291–303.
- [15] Helmke, G. & Rosenbluth, F. (2009). Regimes and the rule of law: Judicial independence in comparative perspective. *Annual Review of Political Science*, 12, 345–366.
- [16] Hirschl, R. (2008). The judicialization of mega-politics and the rise of political courts. *Annual Review of Political Science*, 11, 93–118.
- [17] Hix, S. & Høyland, B. (2011). *The Political System of the European Union*. Macmillan, 3 edition.

- [18] Iaryczower, M., Spiller, P. T., & Tommasi, M. (2002). Judicial independence in unstable environments, argentina 1935-1998. *American Journal of Political Science*, (pp. 699–716).
- [19] Kapiszewski, D. & Taylor, M. M. (2008). Doing courts justice? studying judicial politics in latin america. *Perspectives on Politics*, 6(4), 741–767.
- [20] La Porta, R., Lopez-de Silanes, F., & Shleifer, A. (2008). The economic consequences of legal origins. *Journal of Economic Literature*, 46(2), 285–332.
- [21] La Porta, R., Lopez-de Silanes, F., Shleifer, A., & Vishny, R. W. (1998). Law and finance. *Journal of Political Economy*, 106(6), 1113–1155.
- [22] Lim, C. S., Snyder Jr, J. M., & Strömberg, D. (2015). The judge, the politician, and the press: Newspaper coverage and criminal sentencing across electoral systems. *American Economic Journal: Applied Economics*, 7(4), 103–35.
- [23] Linos, K. & Twist, K. (2016). The supreme court, the media, and public opinion: Comparing experimental and observational methods. *The Journal of Legal Studies*, 45(2), 223–254.
- [24] Martin, A. D. & Quinn, K. M. (2007). Assessing preference change in the u.s. supreme court. *Journal of Law, Economics, and Organization*, 23, 303–325.
- [25] Merryman, J. H. & Pérez-Perdomo, R. (2007). *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press, 3rd edition.
- [26] Moyer, L. P. & Haire, S. B. (2015). Trailblazers and those that followed: Personal experiences, gender, and judicial empathy. *Law & Society Review*, 49(3), 665–689.
- [27] Peresie, J. (2005). Female judges matter: Gender and collegial decisionmaking in the federal appellate courts. *Yale Law Journal*, 114(7), 1759–1790.
- [28] Posner, R. A. (1993). What do judges and justices maximize?(the same thing everybody else does). *Supreme Court Economic Review*, 3, 1–41.
- [29] Posner, R. A. (2008). *How Judges Think*. Harvard University Press.
- [30] Powell, E. J. & Mitchell, S. M. (2007). The international court of justice and the world's three legal systems. *The Journal of Politics*, 69(2), 397–415.
- [31] Ramseyer, J. M. & Rasmusen, E. B. (2001). Why are japanese judges so conservative in politically charged cases? *American Political Science Review*, 95(2), 331–344.
- [32] Rubin, P. H. (1977). Why is the common law efficient? *The Journal of Legal Studies*, 6(1), 51–63.
- [33] Segal, J. A. (1997). Separation-of-powers games in the positive theory of congress and courts. *American Political Science Review*, 91(1), 28–44.
- [34] Segal, J. A. & Cover, A. D. (1989). Ideological values and the votes of u.s. supreme court justices. *American Political Science Review*, 83(2), 557–565.

- [35] Segal, J. A. & Spaeth, H. J. (2002). *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.
- [36] Siems, M. (2018). *Comparative Law*. Cambridge University Press.
- [37] Staton, J. K. & Moore, W. H. (2011). Judicial power in domestic and international politics. *International Organization*, 65(3), 553–587.
- [38] Staton, J. K. & Vanberg, G. (2008). The value of vagueness: delegation, defiance, and judicial opinions. *American Journal of Political Science*, 52(3), 504–519.
- [39] Stone Sweet, A. (2000). *Governing With Judges: Constitutional Politics in Europe*. Oxford University Press.
- [40] Stone Sweet, A. & Brunell, T. (2012). The european court of justice, state noncompliance, and the politics of override. *American Political Science Review*, 106(1), 204–213.
- [41] Sumption, J. (2019). Lecture 1: Law’s expanding empire. *The Reith Lectures 2019: Law and the Decline of Politics*. Accessed 14.10.2019.
- [42] Vanberg, G. (2000). Establishing judicial independence in west germany: The impact of opinion leadership and the separation of powers. *Comparative Politics*, (pp. 333–353).
- [43] Vanberg, G. (2001). Legislative-judicial relations: A game-theoretic approach to constitutional review. *American Journal of Political Science*, 45(2), 346–361.
- [44] Vanberg, G. (2005). *The Politics of Constitutional Review in Germany*. Cambridge University Press.
- [45] Vanberg, G. (2015). Constitutional courts in comparative perspective: A theoretical assessment. *Annual Review of Political Science*, 18, 167–185.