

Woodrow Wilson School of Public and International Affairs

Fall 2016

WWS 404(3)
014 Robertson Hall Tuesday 7.30-10.00

Courts, Judges, and Controversies
Charles M. Cameron

Does electing state court judges distort their impartiality? – If so, what are the policy trade-offs in selecting judges in different ways? Are Supreme Court justices' decisions political? – If so, what are the policy implications for government programs that will be reviewed and modified by the Supreme Court? Are judges racially biased in sentencing? – If so, what are the policy implications of legislatively restricting judicial discretion in sentencing? Are police officers racially biased in arrests? – If so, what are the policy implications for administering law enforcement in different ways?

This course explores these and other controversial topics surrounding courts, judges, and the decisions they make. In studying these questions, we will evaluate the state of the contemporary American judiciary and justice system.

To understand these topics, we read papers published in the past decade in leading social science journals. Therefore, you will learn to read, understand, and critique contemporary empirical social science. This means thinking hard and clearly about causality, systematic observational and experimental evidence, research design, and statistical inference. In addition, you will learn basic facts and frameworks for understanding how courts operate and how judges make decisions. Together, these skills and knowledge will help you undertake original research on courts and judicial institutions.

By the end of the course, you will have a better ability to understand the scientific analysis of social problems and political institutions and how to identify the strengths and weaknesses in policy arguments – and, of course, you will have a better understanding of the complexities surrounding judiciaries and judicial decision-making.

COURSE REQUIREMENTS

Your grade is set by the WWS at 60% from the Research Seminar and 40% from the Lab assignments. You are graded separately on your JP – it will receive a grade as junior independent work.

The grade from the Research Seminar is based on the following.

- 1) First, there are 6 weeks with substantive topics (Weeks 4, 6, 8, 9, 10, and 11). You are to write a *reading response* to TWO of them. Each counts for 30% of your grade. Which weeks you select is up to you; I advise you not to wait until the end of the semester since you will be busy with your JP.
- 2) Second, I will give you an assignment to test your understanding of research design. This counts for 20% of your grade. I will give it to you before Spring Break; it will be due at the end of the week we return.
- 3) Third, you will make a polished oral presentation of your JP. This counts for 10% of your grade.

- 4) Fourth, class participation counts for 10% of your grade. You should do the readings and be prepared to discuss them.

READING RESPONSES

A reading response critiques or explores the theory, research design, evidence, and conclusion presented in one or more of the readings. It should be about 6-10 double-spaced typed pages. It is due the week after the week you select.

JUNIOR PAPERS

You will receive a grade on your JP, but (again) it is a *separate* grade from that in the course. Your JP paper topic is due, in writing, Class 4 (10/11). A draft of your JP is due Class 11 (11/29).

SUMMARY SCHEDULE OF CLASSES

1. 9/20 Introduction to the Course
2. 9/27 How to Read Empirical Papers/ Introduction to Research Design
3. 10/4 Introduction to Courts and Judicial Reasoning
4. 10/11 Are Supreme Court Justices Political? /**Topics due**
5. 10/18 In class presentation of JP proposals
6. 10/25 Race and Judging
7. 11/1 No class, Fall Break
8. 11/8 Gender and Judging
9. 11/15 Racial Bias and the Death Penalty
10. 11/22 Racial Bias and Criminal Justice
11. 11/29 Judicial Elections /**Draft JPs Due**
12. 12/6 Presentations
13. 12/13 Last session. Presentations

DETAILED SCHEDULE OF READINGS

9/20 INTRODUCTION TO THE COURSE

Also, individual meetings during class time to discuss your research interests.

9/27 HOW TO READ EMPIRICAL PAPERS/ INTRODUCTION TO RESEARCH DESIGN

- David Hollander visit
- Steve Fragt visit

Donald Campbell and Julian Stanley, *Experimental and Quasi-Experimental Methods in Research* pp. 5-71. (1963). One of the all-time classics in social science and deceptively brief. Allow plenty of time to work through each research design. This takes lots of thinking.

- <http://jwilson.coe.uga.edu/EMAT7050/articles/CampbellStanley.pdf>

Freedman, David A. *Statistical Models: Theory and Practice*. Preface (pages IX-X) and Chapter 1 (pages 1-17).

Optional Reading

Peters, Jorg, Jorg Langbein, and Gareth Roberts. 2015. "Policy Evaluation, Randomized Controlled Trials, and External Validity – A Systematic Review," *Ruhr Economic Papers* #589 (November 2015). External validity is often ignored in RCTs, this is a huge problem.

http://en.rwi-essen.de/media/content/pages/publikationen/ruhr-economic-papers/rep_15_589.pdf

Christopher Whitty, "What Makes an Academic Paper Useful for Health Policy?" *BMC Medicine*

2015 13:301. <http://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-015-0544-8>

Brian Resnick, "What Journalists Get Wrong about Social Science, According to 20 Scientists," *Vox* January 22, 2016

<http://www.vox.com/science-and-health/2016/1/22/10811320/journalists-social-science>

10/4 INTRODUCTION TO COURTS AND JUDICIAL REASONING

Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso. 2011. "Extraneous Factors in Judicial Decisions." *Proceedings of the National Academy of Sciences* 108(17): 6889-6892.

<http://www.jstor.org/stable/41242099>

For people who have not taken Prof. Kastellec's Judicial Politics course:

Charles Cameron and Lewis Kornhauser, "What Do Courts Do? How To Model Judicial Actions" Chapter 2 of *Model Courts: Positive Political Theory and Judicial Institutions*

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2979391

Cameron & Kornhauser, "What Do Judges Want? How To Model Judicial Preferences" Chapter 3 of *Model Courts* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2979419

Optional

William Miller. *A Primer on American Courts*. 2005. Pearson. Chapters 3-5 (pages 55-142).

10/11 ARE SUPREME COURT JUSTICES POLITICAL? /TOPICS DUE

- Research proposal due!

Epstein, Lee, William Landes, and Richard Posner. 2012. *The Behavior of Federal Judges*, Chapter 1 "A Realistic Theory of Judicial Behavior," (pp. 25-64) and Chapter 3 "The Supreme Court." (pp. 101-152). Rational choice attitudinalism.

Optional

George, Tracey E., and Lee Epstein. "On the Nature of Supreme Court Decision Making." 1992.

American Political Science Review 86(2): 323-337. <http://www.jstor.org/stable/1964223>

- Segal, Jeffrey A. and Harold Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Introduction (pages 1-12).
- Posner, Richard A. 2005. "The Supreme Court, 2004 Term." *Harvard Law Review* 119, 28-102. <http://www.jstor.org/stable/4093559> (skim)
- Cameron, Charles and Lewis Kornhauser, "Rational Choice Attitudinalism? A Review of Epstein, Landes, and Posner," *European Journal of Law and Economics* (2015). https://www.researchgate.net/publication/281572231_Rational_choice_attitudinalism or <https://www.princeton.edu/~ccameron/papers.html>

10/18 IN CLASS PRESENTATION OF JP PROPOSALS

10/25 RACE AND JUDGING

- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57(1): 167–183. <http://www.jstor.org/stable/23496550>
- Sen, Maya. "Is Justice Really Blind? Race and Appellate Review in U.S. Courts." 2015. *Journal of Legal Studies*. <http://www.jstor.org/stable/10.1086/682691>
- Sotomayor, Sonia. "A Latina Judge's Voice." May 14, 2009. *The New York Times*. Available at <http://www.nytimes.com/2009/05/15/us/politics/15judge.text.html>.

Optional Reading

- Moffit, Robert. "Policy Interventions, Low-level Equilibria, and Social Interactions," pp. 45-82 in Blume, Durlauf (ed) *Social Dynamics*. Brookings Institution Press (2001).
- Manski, Charles F. 1993. "Identification of Endogenous Social Effects: The Reflection Problem." *Review of Economic Studies* 60(3): 531-542. <http://www.jstor.org/stable/2298123> This paper is quite difficult. If you try it, read through page 533, and skim the rest. I will discuss in class.
- Grossman, Guy, Oren Gazal-Ayal, Sam Pimentel, and Jeremy Weinstein. "Descriptive Representation and Judicial Outcomes in Multi-ethnic Societies," *American Journal of Political Science* (forthcoming). Peer effects in Israel.

11/1 NO CLASS, FALL BREAK

- Research design exercise will be distributed.

11/8 GENDER AND JUDGING

- Research design exercise due at the end of the week.

- Boyd, Christina L., Lee Epstein, and Andrew D. Martin. 2010. "Untangling the Causal Effects of Sex on Judging." *American Journal of Political Science* 54(2): 389–411. <http://www.jstor.org/stable/25652213>
- Glynn, Adam N., and Maya Sen. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science* 59(1):37-54.

<http://onlinelibrary.wiley.com/enhanced/doi/10.1111/ajps.12118/>

Farhang, Sean, and Gregory Wawro. 2004. "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation Under Panel Decision Making." *Journal of Law, Economics, and Organization* 20(2): 299-330. <http://www.jstor.org/stable/3555020>

11/15 RACIAL BIAS AND THE DEATH PENALTY

Baldus, David C., George Woodworth, and Charles Pulaski. Fall 1983. "Symposium on Current Death Penalty Issues: Comparative Review of Death Sentences: an Empirical Study of the Georgia Experience," *Journal of Criminal Law and Criminology* pp 661-753.

Kastellec, John, "Race, Context, and Judging on the Courts of Appeals: Race-Based Panel Effects in Death Penalty Cases," working paper, Princeton University March 22 2015. Even more panel effects http://www.princeton.edu/~jkastell/death_penalty_race.html

Alesina, Alberto and Eliana Le Ferrara, 2014. "A Test of Racial Bias in Capital Sentencing," *American Economic Review* 104(11):3397-3433. Skip the model, I will explain it to you, focus on the empirics, see if you can get the basic idea.

<http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.104.11.3397>

McCleskey v. Kemp, 481 U.S. 279 (1987)

Brief for petitioner. 1986 WL 727359. *Read from the beginning through the Summary of Argument. The rest is optional.

4/5 RACIAL BIAS, POLICING, AND TRIALS

Roland Fryer, Jr. 2016. "An Empirical Analysis of Racial Differences in Police Use of Force," NBER 22399 July 2016. <http://sanjeev.sabhlोकcity.com/Misc/w22399.pdf>

Knowles, John, Nicola Persico, and Petra Todd. 2001. "Racial Bias in Motor Vehicle Searches: Theory and Evidence." *Journal of Political Economy* 109(1): 203-229.

<http://www.jstor.org/stable/10.1086/318603>

Anwar, Shamena, Patrick Bayer, and Randi Hjalmarsson. 2012. "The Impact of Jury Race in Criminal Trials." *Quarterly Journal of Economics* 127(2): 1017-1055.

<http://qje.oxfordjournals.org/content/127/2/1017.full.pdf+html>

Optional

Joshua Fischman and Max Schanzenback, "Racial Disparities Under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums," working paper, Northwestern University School of Law

[http://www.fjc.gov/public/pdf.nsf/lookup/NSPI201212.pdf/\\$file/NSPI201212.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/NSPI201212.pdf/$file/NSPI201212.pdf)

Joshua Fischman and Max Schanzenbach, 2011. "Do Standards of Review Matter? The Case of Federal Criminal Sentencing," *The Journal of Legal Studies* 40(2): 405-437.

<https://www.jstor.org/stable/pdf/10.1086/659262.pdf>

Price and Wolfers, "Racial Discrimination Among NBA Referees"

https://www.amstat.org/Chapters/boston/nessis07/presentation_material/Justin_Wolfers.p

Barak, Ariel, William Farrar, Alex Sutherland, "The Effect of Police Body-Worn Camera on the Use of Force and Citizen Complaints Against the Police: A Randomized Trial," *Journal of Quantitative Criminology* 31(3):509-535 (2015) [http://link.springer.com/article/10.1007/s10940-014-](http://link.springer.com/article/10.1007/s10940-014-9236-3)

[9236-3](http://link.springer.com/article/10.1007/s10940-014-9236-3)

11/29 JUDICIAL ELECTIONS

Cobb, Sue Bell, "I Was Alabama's Top Judge. I Am Ashamed of What I Had to Do to Get There,"
Politico Magazine March/April 2015

http://www.politico.com/magazine/story/2015/03/judicial-elections-fundraising-115503_full.html#.VP2RjeEbi1h

Huber, Gregory A. and Sanford C. Gordon. 2004. "Accountability and Coercion: Is Justice Blind when it Runs for Office?" *American Journal of Political Science* 48(2): 247-263.

<http://www.jstor.org/stable/1519881>

Caldarone, Richard, Brandice Canes-Wrone, and Tom S. Clark. 2009. "Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions." *Journal of Politics* 71(2): 560-573. <http://www.jstor.org/stable/10.1017/s002238160909046x>

Optional

Gibson vignettes paper.

12/6 PRESENTATIONS

5 students, plus 5 discussants

12/13 LAST SESSION. PRESENTATIONS

5 students, plus 5 discussants

Some Additional Papers

Charles Cameron
Saturday, June 17, 2017
Tokyo, Japan