
POL 423: THE POLITICS OF SUPREME COURT NOMINATIONS

DEPARTMENT OF POLITICS
PRINCETON UNIVERSITY
UNDERGRADUATE PROGRAM
FALL 2013

THURSDAY 1:30 - 4:20 PM
ROBERTSON 20

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030 CORWIN

Supreme Court nominations can be significant political events. More than this, though, they provide an integrative perspective on American politics as a whole: during nomination politics the President, Congress, interest groups, the media, and citizens all interact, with profound implications for the Supreme Court. Moreover, Supreme Court nominations occur fairly frequently so one can use nomination politics to gauge changes in American society and politics over time.

In this class we use nomination politics to examine: how the Supreme Court works, how its composition has changed over time, and with what consequences; the decision of justices to leave the Court; the logic of Presidential selection of political appointees; the growth of interest groups and their use of political tactics in nomination politics; how congressional hearings work; when and how presidents go public, and with what effect on the media and public opinion; how the media covers political events like nominations, what drives the volume and tone of its coverage, and the effect of media bias on coverage; the drivers and dynamics of public opinion; the determinants of roll call voting in the Senate; and the implications of the Founder's design for the "equilibrium" Court, that is, the long-run dynamics of the Supreme Court's ideological composition.

CLASS ORGANIZATION

The seminar has a lecture/discussion format, and combines social science – theory and systematic quantitative evidence – with case studies. The cases are critical since it is essential to have a feel for how political actors actually make decisions, before theorizing or moving to quantitative evidence. But it is important to go beyond the trees to see the forest as well.

After three introductory lectures, each week examines an aspect of nomination politics, nine in all (see below). The first half of each class focuses on what social scientists know and don't know about the topics, e.g., the growth of interest groups or the strategic use of congressional hearings. To facilitate discussion, the entire class reads a baseline case. Typically, we will review the analytic material and discuss how the case illustrates the principles in action. Then, during weeks 4-12, the second half of each class is devoted to student presentations of additional cases.

The case-oriented readings are the best I could find, typically employing at least some primary material (video, tape recordings, memoirs, documents, reportage, investigative journalism).

COURSE REQUIREMENTS

Student evaluation is based on 1) Presentation in class of TWO cases and leadership of class discussion, 2) Write-up of ONE of the two cases you present, 3) One “Memo to the Boss” summarizing in a practical way the lessons to be learned about some part of nomination politics, 4) Class participation, and 5) One of the following: A second case study write-up, a small research paper, or a final exam (your choice but I must approve all papers).

1 Two In-class Case Study Presentations (20%)

In nine of the sessions (Weeks 4-12), one or more students will serve as Case Study Presenter. Students tasked with this leadership role should 1) prepare a PowerPoint briefing on the case study; 2) formulate discussion questions and distribute them to members of the class prior to class; and 3) lead discussion of the case. You should anticipate taking this role twice during the semester. Some of the cases require a degree of original research, which will be reflected in grading.

As an aid for case studies, especially about selection, I have placed a (work in progress) Bibliography of Sources on the course web page. I will continue to update and I would like to include sources that you find. You should consult it early to start research – don’t wait til the last minute!

2 One Case Study Write-Up (25%)

I would like you to write up ONE of your case studies as a Teaching Note, in an 8-10 page paper. The write-up should provide background to the case, a time-line, and a narrative chronology of events. In addition, it should identify and discuss the theoretical and practical issues raised by the case. It should include your discussion questions. You should identify the sources used in your case, giving links to electronic sources. You may include as an Appendix such materials as news stories, declassified documents, and the like.

3 A Memo to the Boss (20%)

Write a practical memo to a political actor of your choice, distilling the social science on a topic and useful lessons from case studies.

- Example: A memo to nominee Elena Kagan, on what to expect and how to answer questions during her confirmation hearing.
- Example: A memo to newly elected President Obama on how, and how not, to select nominees.
- Example: Ditto, how to go public over a nominee.
- Example: A memo to a senator from your state, explaining how he should vote on Sonia Sotomayor’s confirmation, and why.
- Example: A memo to the head of an interest group laying out an action plan to oppose a nominee, e.g., Alito.

You get the idea.

Memos should be relatively brief, under 10 pages, typed and double-spaced. Your memo is due to me TWO WEEKS *AFTER* the class addressing the topic (this is to allow you to benefit from the lecture and the case presentations on the subject, also to spread the work out over the semester).

4 Class Discussion (10%)

You should participate in class discussions in an intelligent and informed way, showing familiarity with the baseline case study and an understanding of the material in the required readings. How can the material in the lecture and required readings be applied to the case study? Being helpful to the Case Study Presenter is a good idea, since you will be one yourself.

4 Final Exam, Research Project, Another Case (25%)

You choose. However, if you choose to write a paper, you must meet with me early in the semester to discuss your topic and lay out a realistic plan for carrying it out. And, I must approve the topic (this is to protect you from undertaking a project that cannot succeed). I am open to several students working together on a more ambitious project.

The exam, if you choose that option, will be an open book take-home final with several questions requiring brief essays covering any material covered in the course.

BOOKS TO ACQUIRE

John Dean, *The Rehnquist Choice* (2002)

Jan Crawford Greenberg, *Supreme Conflict* (2007).

Michael Pertschuk, *The People Rising: The Campaign Against the Bork Nomination* (out of print, buy used)

Mark Gitenstein, *Matters of Principle: An Insider's Account of America's Rejection of Robert Bork's Nomination to the Supreme Court* (out of print, buy used)

John Zaller, *Media Politics* (free download from Zaller's web page)

SCHEDULE OF CLASSES

9/12. Week 1. Introduction.

9/19 Week 2. The Larger Context.

9/26 Week 3. Why Appointments Matter, and When

10/3 Week 4. Exiting the Court

10/10 Week 5. Presidential Selection of Nominees 1

10/17 Week 6. Presidential Selection of Nominees 2

10/24 Week 7. Interest Group Mobilization

Note: No Class Thursday 10/31 (Fall Recess)

11/7 Week 8. Judiciary Committee Hearings

11/14 Week 9. The President & Going Public

11/21 Week 10. Media Coverage

Note: No Class Thursday 11/28 (Thanksgiving Break)

12/5 Week 11. Public Opinion

12/12 Week 12. Voting in the Senate/Long-run Legacies

READINGS

WEEK 1: OVERVIEW OF THE COURSE (9/12)

Cameron, *Nomination Politics*, Preface "The Pelican Problem"

--- Ibid, Chapter 1 Section 1: "A Window on American Politics"

WEEK 2: THE CONTEXT OF MODERN NOMINATION POLITICS (9/19)

Five Important Changes in American Politics, 1930-2010

Cameron, *Nomination Politics*, Chapter 1, remainder.

1. Growth of Government

Garrett, Thomas and Russell M. Rhine. 2006. "On the Size and Growth of Government," Federal Reserve Bank of St. Louis *Review* 88(1):13-30.

<http://research.stlouisfed.org/publications/review/06/01/GarrettRhine.pdf>

2. Rise of Federal Judicial Power

(No good reading on this topic)

3. Increase in Organized Groups

Dan Tichenor and Richard Harris. 2009. "The Rise of Modern Interest Group Politics: Progressive Era Origins," pp. 127 - 147 in Tichenor and Harris (eds) *A History of the U.S. Political System*

Volume II. ABC CLIO. http://books.google.com/books?id=1q0hcy1F2dMC&pg=RA1-PA127&lpg=RA1-PA127&dq=richard+a.+harris+political+science&source=bl&ots=1-ylTrzY4g&sig=WF86nNG7OY7JNpW_s6sWRBnl5wE&hl=en&sa=X&ei=Y7r-UZeeK5X64APU04HwCQ&ved=0CFsQ6AEwBg#v=onepage&q=richard%20a.%20harris%20political%20science&f=false

http://books.google.com/books?id=1q0hcy1F2dMC&pg=RA1-PA127&lpg=RA1-PA127&dq=richard+a.+harris+political+science&source=bl&ots=1-ylTrzY4g&sig=WF86nNG7OY7JNpW_s6sWRBnl5wE&hl=en&sa=X&ei=Y7r-UZeeK5X64APU04HwCQ&ved=0CFsQ6AEwBg#v=onepage&q=richard%20a.%20harris%20political%20science&f=false

http://books.google.com/books?id=1q0hcy1F2dMC&pg=RA1-PA127&lpg=RA1-PA127&dq=richard+a.+harris+political+science&source=bl&ots=1-ylTrzY4g&sig=WF86nNG7OY7JNpW_s6sWRBnl5wE&hl=en&sa=X&ei=Y7r-UZeeK5X64APU04HwCQ&ved=0CFsQ6AEwBg#v=onepage&q=richard%20a.%20harris%20political%20science&f=false

http://books.google.com/books?id=1q0hcy1F2dMC&pg=RA1-PA127&lpg=RA1-PA127&dq=richard+a.+harris+political+science&source=bl&ots=1-ylTrzY4g&sig=WF86nNG7OY7JNpW_s6sWRBnl5wE&hl=en&sa=X&ei=Y7r-UZeeK5X64APU04HwCQ&ved=0CFsQ6AEwBg#v=onepage&q=richard%20a.%20harris%20political%20science&f=false

Kay Schlozman. 2010. "Who Sings in the Heavenly Chorus? The Shape of the Organized Interest System," pp. *Oxford Handbook of Political Parties and Interest Groups*, Jeffrey Barry(eds.)

<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199542628.001.0001/oxfordhb-9780199542628-e-22>

4. Ideological Polarization of the Political Parties

Adam Bonica, Nolan McCarty, Keith Poole, and Howard Rosenthal. 2013. "Why Hasn't Democracy Slowed Rising Inequality?" *Journal of Economic Perspectives* 27(3):103-124.

<http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.27.3.103>

Bafumi, Joseph and Michael Herron. 2010. "Leap-frog Representation and Extremism: A Study of Voters and the Members in Congress," *American Political Science Review* 104(3): 519-42. Available on JSTOR.

Morris Fiorina and Samuel Abrams. 2009. *Disconnect: The Breakdown of Representation in American Politics*. Chapter 6; Chapter 7 pp 150-161.

5. Rise of Divided Party Government

Morris Fiorina. 1992. "An Era of Divided Government," *Political Science Quarterly* 107(3): 387-410. Are voters doing it on purpose? Available on JSTOR.

Mayhew, *Divided We Govern*. "Conclusion".

WEEK 3: HOW THE SUPREME COURT WORKS AND WHY APPOINTMENTS
MATTER – AND WHEN (9/26)

Cameron, *Nomination Politics*, Chapter 2 "Why Supreme Court Nominations Matter – and When"

----. *Nomination Politics*. Chapter 3, "The Courts That Nomination Politics Made, 1930-2010"

Jack Balkin and Sanford Levinson. 2006. "The Processes of Constitutional Change: From Partisan Entrenchment to the National Security State," *Fordham Law Review* 75(2): 101-145. (partisan entrenchment thesis). Presidents try to stack the Court, with consequences for constitutional law.

http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1230&context=fss_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26q%3Dbalkin%2Blevinson%26btnG%3D%26as_sdt%3D1%252C33%26as_sdt%3D#search=%22balkin%20levinson%22

Optional

Montgomery Kosma. 1998. "Measuring the Influence of Supreme Court Justices," *Journal of Legal Studies* 27(2): 333-372. Justices treated like capital investments – what makes for a good "buy" for the president? Who were good buys and who bad?

WEEK 4: LEAVING THE COURT (10/3)

Cameron and Mattioli, "Leaving the Court" //probably won't be ready //

Stolzenberg, Ross and James Lindgren. 2010. "Retirement and Death in Office of U.S. Supreme Court Justices," *Demography* 47(2): 269-298.

Garrow, David J. 2000. "Mental Decrepitude on the U.S. Supreme Court: The Historical Case for a 28th Amendment," *University of Chicago Law Review* 67: 995-1087.

Baseline Case

Artemus Ward. 2000. "The Tenth Justice: The Retirement of William O. Douglas," *Journal of Supreme Court History* 25(3): 296-312.

Student Cases

Fortas

Article III Section 1: The Good Conduct Clause (history of)

Rehnquist & O'Connor

Others

WEEK 5: PRESIDENTIAL SELECTION OF NOMINEES 1 (10/10)

Cameron and Mattioli, "Presidential Section of Supreme Court Nominees: The Characteristics Approach"

Cameron, "The Process of Selecting Nominees"

John P. Burke, *The Institutionalized Presidency*, 1-14, 35-49 (skim),

Baseline Cases

Bush: Greenburg *Supreme Conflict* (Chapters 8-12 [Roberts, Alito, & Miers])

Student Cases

FDR: The Court Packing Plan

FDR: Feldman

Truman: Yalof

Eisenhower: Brownell, Nichols

Johnson: (tapes),

*Nixon: Dean //call with Dean?

Ford, Bush41

Clinton: Drew

The Legal Policy Elite: WH Legal Counsel

The Legal Policy Elite: The AG and the OLC

WEEK 6: PRESIDENTIAL SELECTION OF NOMINEES 2 (10/17)

As previous week, more student cases

WEEK 7: INTEREST GROUP MOBILIZATION (10/24)

Cameron and Gray, "Interest Group Mobilization"

Jack Walker. 1991. *Mobilizing Interest Groups in the United States*, Chapter 6 "Pathways to Influence in American Politics"

Kollman *Outside Lobbying*

Baseline Case:

Bork: Michael Pertschuck and Wendy Schaezel. 1989. *The People Rising: The Campaign Against the Bork Nomination*.

Student Cases

Growth of the Conservative Legal Movement: Teles, The Federalist Society

Parker and the NAACP (book), also article

Thomas

Interest Groups Before the Court (friends of the Court)

(History of some groups). Alliance for Justice <http://www.c-spanvideo.org/program/39563-1>

WEEK 8: THE JUDICIARY COMMITTEE AND THE HEARINGS (11/7)

Cameron, Ellen Kay, and Jeffrey Segal. 2013. Scandals paper.

Paul Burstein and C. Elizabeth Hirsch. 2007. "Interest Organizations, Information, and Policy Innovation in Congress," *Sociological Forum* 22(2): 174-199.

Charles Shipan and Megan Shannon. 2003. "Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations," *American Journal of Political Science* 47(4): 654-668.

Baseline Case:

Bork: Mark Gitenstein. *Matters of Principle*.¹

Student Cases

Thomas:

Marshall

Sotomayor: <http://www.washingtonpost.com/wp-srv/package/supremecourt/sotomayor.html>

Note that hearing vis CSpan are on line for most nominees since ___

WEEK 9: PRESIDENTS AND GOING PUBLIC (11/14)

¹ Read the Wikipedia entry on Gitenstein: http://en.wikipedia.org/wiki/Mark_Gitenstein. Also an interview: <http://blogs.wsj.com/law/2009/11/09/from-mayer-brown-to-bucharest-a-chat-with-mark-gitenstein/>
Public Citizen opposition to his DOJ appointment: http://www.citizen.org/congress/article_redirect.cfm?ID=18353

Cameron and Park, "Going Public When Opinion Is Contested: Evidence from Presidents' Campaigns for Supreme Court Nominees, 1930-2009," *Presidential Studies Quarterly* 41(3):442-470 (2011). <http://www.princeton.edu/~ccameron/EvidencefromPresidentsCampaigns.pdf>

George Edwards, *On Deaf Ears: The Limits of the Bully Pulpit*, Chapters 8 and 9 (pp. 187-238).

Baseline Case

Bork – Reagan speeches. – review material in Gittenstein on whether and how much Reagan should Go Public on Bork.

Student Cases

Cases with media resources.

WEEK 10: MEDIA COVERAGE (11/21)

Matt Gentzkow and Jesse Shapiro. 2007. "What Drives Media Slant? Evidence for U.S. Daily Newspaper," *Quarterly Journal of Economics*
Zaller, *Media Politics*, pp. 11-29.
<http://www.sscnet.ucla.edu/polisci/faculty/zaller/media%20politics%20book%20.pdf>

Baseline Case:

Thomas (tapes)

Student Cases

Cable TV News: Coverage of Fox vs. CNN: a recent nominee
LAT vs WSJ: some nominees
TV News: Vanderbilt archives
Alito
Sotomayor

WEEK 11: PUBLIC OPINION (12/5)

Cameron and Kastellec, "Public Opinion, Media Effects, and Supreme Court Nominations" //NOT DONE YET//

Larry Bartels, "Messages Received: The Political Impact of Media Exposure," *American Political Science Review* 87(2): 267-285 (1993).

Prior, Markus. 2013. "Media and Political Polarization," *Annual Review of Political Science* 16:101-127.

Baseline Case

AEI Public Opinion Studies, *Public Opinion on the Supreme Court*
http://www.aei.org/files/2012/06/14/-possupreme-courtjune-20122_162919650849.pdf

Student Cases

WEEK 12: VOTING IN THE SENATE/THE LONG RUN (12/12)

- Charles Cameron and Jonathan Kstellec. 2013. "Voting for Justices: Change and Continuity in Confirmation Voting 1937-2010," *Journal of Politics*
- Jonathan Kstellec, Jeffrey Lax, and Justin Phillips. 2010. "Public Opinion and Senate Confirmation of Supreme Court Nominees," *Journal of Politics* 72(3):767-784.
- John Kingdon. 1989. *Congressmen's Voting Decisions*. Chapter 2 "The Constituency", Chapter 10 "Consensus Mode of Decision"
- Francis Lee. *Beyond Ideology*, Chapter 4 "Dividers Not Unifiers"

Optional

Baseline Case

None

Student Cases

Marshall vs. Thomas:

Marvin Overby, Beth Henschen, Michael Walsh, Julie Strauss. 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote on Justice Clarence Thomas," *American Political Science Review* 86(4): 997-1003. <http://www.jstor.org/stable/1964351>

Marvin Overby, Beth Henschen, Michael Walsh, Julie Strauss. 1994. "African-American Constituents and and Supreme Court Nominees: An Examination of the Senate Confirmation of Thurgood Marshall," *Political Research Quarterly* 47(4):839-855.
<http://prq.sagepub.com/content/47/4/839.short>

Explaining the Vote: Senate press releases after votes.

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Friday, November 22, 2013