L32 Political Science 519: Comparative Judicial Politics

Wednesday, 10 AM-12 PM, Lopata House 16

Instructor:

Matthew Gabel; mgabel@artsci.wustl.edu; Siegle 290; office hours: Tuesday 2-4

Course Description:

The goal of this course is to expose students to a variety of research topics related to how judicial and legal institutions shape political and economic life, focusing mainly on democracies. The study of judicial politics in political science is primarily about American law and courts. This research has generated an increasingly sophisticated (both theoretically and empirically) body of research. However, many of the arguments about American institutions are inherently comparative in nature. For example, an argument that public opinion is sufficiently high to provide the Supreme Court with political cover when ruling against legislative majorities implies that if public support were lower the court would behave differently. But we have no observations of such low public support (at least in the modern era), and therefore cannot test this sort of claim with observational data from the US context. Comparative research, however, may provide the necessary variation to test such a claim.

In addition, courts and legal systems vary considerably around the world (e.g., common law vs. civil law), and we can imagine a variety of ways these differences could have important political consequences. For instance, judicial review in some countries is exercised exclusively by one court that can review laws before they are implemented. Other constitutional courts can review laws only after their implementation. This sort of institutional variation may affect how sensitive legislatures are to constitutional courts when deciding legislation. This may also influence how citizens and interest groups decide to employ their resources to affect legal change (e.g., lobbying legislators vs. bringing legal challenges in court).

Requirements:

This is a seminar course and thus attendance is mandatory. Participation in course discussions will account for 20% of each student’s grade. For most weeks, each student will write a short (400 words) thought-piece about a question related to the readings each week. These writing assignments represent 30% of the grade.

Students must also write a short literature review concerning the topic of the readings for a particular week. This is worth 20% of the grade. Students can choose for which week they would like to write a paper. The literature review (1600 word limit) should (a) provide a justification for the research question to be addressed; (b) concisely summarize the answers to the question provided by the research for that week; (c) evaluate the quality of the conclusions drawn by the authors, and (d) briefly comment on what issues remain
unresolved. This paper will refer to the broader literature, which includes the required readings but also the results of a literature search. Since the readings for each week may address several questions, students may focus on only a part of the literature. Students are encouraged to consult with the instructors before choosing an exact topic. The literature review is due April 4.

For the remaining 30% of the grade, students are expected to produce an executable research design related to a topic covered in the course. This research design can address theoretical or empirical issues in previous research or propose a novel contribution. There is no fixed length to this paper, but it should fulfill the requirements for the literature review (see items a-d above) and propose a research design. This research design should include both a careful discussion of the theoretical model and specific empirical tests (which requires attention to issues of data, conceptual operationalization, and methods). Students may use their literature review as the basis for this research design. The research design is due May 2.

Readings:

All readings will be made available in electronic format or in paper format for photocopying. Some of the readings are from books that are available in paperback. I encourage students to purchase these books if the topic is of interest to them.
Schedule

1. 1/18. Some preliminaries

Topic:

Basic definitional and conceptual issues related to comparative judicial politics—e.g., What is a court? What is comparative constitutionalism? What is administrative law? What is public law? Also, the Jacob book provides an introduction to differences in judicial politics across countries.

Readings:


2. 1/25. Comparative Constitutional Law I

Topic:

What is a constitution and why does it matter?

Readings:


3. 2/1. Comparative Constitutional Law II

Topic:

Why do constitutions change and what are the consequences?

Readings:


4. 2/8 Common Law

**Topic:**

What is common law, how did it emerge and develop, and how does it affect political and economic life?

**Readings:**


5. 2/15 Civil Law
**Topic:**

What is civil law, how does it differ from common law, and how does it influence social, economic, and political life?

**Readings:**


**6. 2/22. Organization of Courts**

**Topic:**

How do individual courts differ in their internal organization and the procedures that govern their adjudication? That is, how do intra-institutional rules influence judging on courts; and how does variation in these rules across nations (or variation across courts in a given nation) affect outcomes? How do systems of courts differ? What are the consequences of these different organizational structures?

**Readings:**


7. 2/29. Judicial Independence

*Topic:*

How do we define and measure judicial independence? Why would politicians provide for/maintain/abide an independent judiciary?

*Readings:


8. 3/7. **Judicial Independence and its Consequences**

*Topic:*

What effect does judicial independence have on judicial decision-making?

*Readings:*


*Topic:*

What is judicial review? How do the institutional and social context of judicial review shape whether and how constitutional courts protect constitutional rights in the face of legislative opposition?
Readings:

Carrubba, Gabel, Helmke, Martin, Staton. NSF proposal for comparative courts project.


10. 3/28. Courts and Democratization/Democratic Process

Topic:

What role do courts play in the process of democratization? Do they affect consolidation and the development of legitimacy? How do courts and their role in law-making affect democratic processes and behavior in established democracies?

Readings:


**11. 4/4. International Courts and Tribunals**

*Topic:*

What is international law and what role and influence do international courts have in enforcing and interpreting that law?

*Readings:*


**12. 4/11. European Court of Justice**

*Topic:*
How has EU law developed and how has the ECJ acquired powers typically reserved for national courts—e.g., judicial review over national laws?

Readings:


13. 4/18. “Borrowing” and the “Transplantation” of Law

Topic: What explains why and when legal ideas, concepts, and rules diffuse from one place to another? How do national constitutional and legal norms in one country (or sub-unit of a country) affect those in another?

Readings:


14. 4/25: What Have We Learned?

Topic: What are the important theoretical and empirical questions we have identified in the study of comparative courts? How would one go about empirically studying them in a rigorous manner?