

Law and Politics

Government 290 Fall 2017

Location Hepburn 19

Time 10:10am-11:40am T/R

Final Exam December 19 T, 1:30-4:30pm

Instructor James Sieja

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Drop-in Office Hours 1:00pm-5:00pm M, 1:00-4:00pm T, 9:00am-1:00pm W, and by appointment

Overview

In his first days in office, President Trump made two decisions that directly affected (and were affected by) the legal system in the US: the “travel ban” executive order and the nomination of Neil Gorsuch to replace the late Antonin Scalia. Were the outcomes of these decisions predictable? More broadly, how can we use what we think we know to predict what any actor in the legal system will do? And more importantly, how can we use the methods of political science research to generate knowledge about behavior within the legal system?

In this class, we will examine the American legal system, identify open and interesting research questions, and conduct original analysis in order to answer (some of) them. Students will apply knowledge and research skills acquired in class to produce a contribution to what we know about the legal system. Additionally, students will develop skills to analyze critically complex research reports.

Textbook and course readings

We have two complementary textbooks for the course. The first,

Epstein, Lee, and Andrew D. Martin. 2014. *An Introduction to Empirical Legal Research*. Oxford University Press: Oxford, UK

will provide assistance for the question, design, and execution stages of your research. While only the first six chapters are formally assigned for class, the back half of the book (chapters 7 through 12) can really make your final project pop. I expect questions and discussion of topics raised in those chapters as you progress on your project.

As its name implies, the second book,

Baglione, Lisa A. 2016. *Writing a Research Paper in Political Science: A Practical Guide to Inquiry, Structure and Methods*. 3rd edition. CQ Press: Boston

focuses more on the composition of a research paper. Both will prove invaluable to you as you go through the course and continue in your studies. I will post other readings to the course Sakai site. Some readings you will find on your own using Google Scholar and the library’s academic databases.

Course format

Because this is a seminar course, my role is not to talk at you. Instead, my role is to facilitate discussion of the ideas and research we will encounter over the course of the semester. Coincidentally, you have the same role. It is imperative, then, that every member of the class comes prepared (i.e., having read the materials carefully and critically) to discuss the day's topic. The success of the class depends on your dedication to preparation and engagement. A short observation here: The readings are extensive and will take some time to get through. They are not impossible, though. If you are a slow reader like the instructor, plan for a few hours of preparation for each class.

Ask questions. Argue. Challenge. Probe. Do all of these honestly (see below), and we will have a successful semester.

As part of your final grade, each student will officially lead discussion for one class meeting during the semester. Even if you do not aim to become a professional teacher someday, this exercise will help develop your oral communication and presentation skills. And, no matter what your chosen future profession, at some point you will have to organize and present material to the "newbs." Key here: See this requirement as an opportunity to gain and polish a skill.

You will pick your day to lead discussion during the first full week of class. A few days will be "off limits" (mostly in the selection and nomination parts of the course) so I may ask you to pick another if I have already reserved that day for myself.

Course requirements and grading

Reading memos:	25% (8 @ 3.125% each)
Class leadership:	15%
Final paper:	25%
Preliminary assignments:	25% (5 @ 5% each)
Attendance and participation:	10%
Total:	100%

Let me know before class if you must miss. There is no acceptable number of unexcused absences. Regardless of the reason for your absence, you are responsible for the material covered during the class meeting. After two unexcused absences, each subsequent unexcused absence will lower your final letter grade by a quarter-point (e.g., a 3.25 becomes a 3.0 at three unexcused absences, a 2.75 at four, etc.). If you are absent on the day you have signed up to lead discussion it will automatically reduce your final grade by a quarter-step.

Barring clerical error (e.g., I added up the points incorrectly), all grades are final. I am always willing to talk with you about written assignment grades and suggest ways to improve. But, I will not bargain over grades or points, nor will there be extra credit opportunities.

I will employ a standard grading scale:

4.0 (100-97)	3.25 (90-87)	2.5 (80-77)	1.75 (70-67)	1.0 (61-60)
3.75 (97-93)	3.0 (87-83)	2.25 (77-73)	1.5 (67-63)	0.0 (below 60)
3.5 (93-90)	2.75 (83-80)	2.0 (73-70)	1.25 (63-61)	

I will not round grades as a matter of course; however, your *exceptional* effort in one or more elements of the final grade may be considered a plus factor if your grade is on the borderline. There

is no curve in this course, though I reserve the right to adjust grade cutoffs if necessary. The adjustments will only work neutrally or in your favor, if applied.

There is no pass/fail option for this course. There are no exceptions to this policy.

Reading memos

Before eight class meetings throughout the semester, you will be responsible for turning in a 1.5 to 2 page reading memo. The memo should begin with a brief, one-paragraph summary of the day's readings. In the body of the memo, critically discuss the finding(s), method(s), and (or) theoretical orientation(s) of one (or more) reading(s). The best memos will go outside the readings (but not too outside) to make their critical point. This might mean relating the point to something we read earlier, or it might mean doing some cursory research. The last portion of the memo should raise two or three questions that you have after reading the day's selections.

Memos are due by 8pm the evening before class. Send them to the instructor's e-mail.

To ensure that you don't wait until the last eight class periods to complete this requirement, **three** memos are due during the month of **September**, **three** are due during **October**, and **two** are due during **November**. Monthly quotas may not be exceeded. Failure to meet a monthly quota will result in a half-letter grade (5%) reduction in the final grade.

Final paper and presentation

The final paper will be a substantial analytical work (no less than 15 pages) in which you use data to answer a substantive research question of your choice about the US legal system, US law and politics, or a closely-related topic in American government. Citations will follow the American Political Science (APSA) citation guide, a copy of which can be found here: <http://www.apsanet.org/portals/54/Files/Publications/APSASStyleManual2006.pdf>. Pay particularly close attention to pages 17 through 33. To keep you on track to completion, there are six preliminary elements to the project. You will receive feedback at each step to ensure a successful final paper. The last five will be graded. You will receive more detailed information on each step as we approach it. However, note that, though these are listed sequentially, you can (and should) work on some elements concurrently. This is especially true of the research design element, which should be started long before it is due.

- 1) Research question (October 3)
- 2) Annotated bibliography (October 18)
- 3) Literature review (October 31)
- 4) Research design (November 7)
- 5) First draft (December 1)
- 6) Peer review of first draft (December 3)

On one of the last two days of class, you will present your research: the question, design, data, findings, etc. The final draft of the paper is due in hard copy at 4:30pm on December 19.

Expectations and technology policy

I expect this class, the readings, making an argument, and getting involved to be the thing you care about most in the world during the 180 minutes we meet each week. I expect you to come to class at least having read the material for the week, even if you haven't fully understood it or have an opinion on it yet. That's why we have class - to work through those issues. But, understanding and evaluation of the material will be difficult if you have not done the first part: reading them yourself.

I expect you to bring assigned reading material to class with you. Many of the readings are on the course Sakai site or accessible through the library's databases. For this reason, if you do not print out the readings, you should bring a laptop with which you can access them. Accessing readings and note-taking are the only regularly authorized uses of an electronic device during class.

Disability accommodations

Please inform me during the first two weeks of classes if you need any accommodations in the curriculum, instruction, or assessments of this course to enable you to participate fully. Confidentiality of the shared information will be strictly maintained. We will work with Disability and Accessibility Services (<http://www.stlawu.edu/disability-and-accessibility-services>) if accommodations require such assistance.

Academic honesty

I expect everyone to conduct themselves with integrity and honesty in this class. There are two facets to this expectation.

First, all of the work you do in this class will be your own. Don't cheat. Don't plagiarize. Don't take short cuts. If you commit an act of academic dishonesty, I am bound to follow the procedures outlined in the St. Lawrence University Student Handbook (available at <http://www.stlawu.edu/sites/default/files/resource/Student%20Handbook%202016-2017%20update%20feb17.pdf>) The Handbook describes what constitutes academic honesty and penalties for violation on pages 94 through 100. Again, don't cheat.

As the semester goes on, you may find yourself in a situation where, due to multiple pressures on your time, you may consider taking a short cut in order to turn in an assignment or paper by the deadline. If this is the case, the thing to do is to drop everything and contact me via email immediately regarding your situation. I can help relieve some of the pressure related to my class in a way that is equitable for the other students in the class as well. But, I can't do anything for you once you commit an act (knowingly or negligently) of academic dishonesty.

Second, I expect everyone to be intellectually honest. This means listening attentively to other's comments and questions and responding appropriately. Some of the material in the class is controversial, and an intellectually vibrant community like St. Lawrence ought to entertain opinions on most any side of a controversy. Moreover, a liberally-educated person ought to be able to articulate fearlessly the "best case" for any legitimate proposition. So, we will not resort to *ad hominem* attacks, shut-down-by-slogan, or straw person arguments. (Ok, I might do the straw person argument sometimes, but only for effect.) Believe in the rightness of your argument; be prepared to challenge both yourself and others; and be open to changing your mind.

Topics and readings

Please note that the **readings are subject to change**. I will let you know throughout the semester where we are in the schedule and where we are going. Starred (*) readings can be found on Sakai.

August 31 Introduction to the course

Week I - "Big Questions" in Law and Courts Research

September 5 Legal model
--*The Supreme Court and the Attitudinal Model Revisited*, Chapters 2 & 7*
--Segal, Jeffrey A. 1984. "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981." *American Political Science Review* 78(4): 891-900
Research Reading - Epstein and Martin, Chapter 1

September 7 Attitudinal model
--*The Supreme Court and the Attitudinal Model Revisited*, Chapters 3 & 8 (selections)*
--Segal, Jeffrey A., and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83(2): 557-565.
Research Reading - Baglione, Chapter 1

Week II - "Big Questions," continued

September 12 Strategic model
--Epstein, Lee, and Jack Knight. 2000. "Field Essay: Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead." *Political Research Quarterly* 53: 625-661
--Harvey, Anna, and Barry Friedman. 2006. "Pulling Punches: Congressional Constraints on the Supreme Court's Constitutional Rulings, 1987-2000." *Legislative Studies Quarterly* 31(4): 533-562
Research Reading - Bonneau and Bartels, "The Normative Implications of Empirical Research: A Research Agenda," in *Making Law and Courts Research Relevant: The Normative Implications of Empirical Research*, p. 3-13*

September 14 Other models
--Baum, *Judges and Their Audiences: A Perspective on Judicial Behavior*, Chapter 2*
--Posner, Richard. 1993. "What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)." *Supreme Court Economic Review* 3: 1-41.
Research Reading - Epstein and Martin, Chapter 2

Week III – Federal Circuit Courts – Jessi (9/19) and Carlos (9/21)

- September 19** --Hettinger, Virginia A., Stefanie A. Lindquist, and Wendy L. Martinek. 2004. “Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals.” *American Journal of Political Science* 48: 123-137.
--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

Research Reading – Epstein and Martin, Chapter 3

- September 21** --Songer, Donald, Jeffrey Segal, and Charles Cameron. 1994. “The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions.” *American Journal of Political Science* 38(3): 673-696.
--Clark, Tom. 2009. “A Principal-Agent Theory of En Banc Review.” *Journal of Law, Economics, and Organization* 25(1): 55-79.

Research Reading – Baglione, Chapter 2

Week IV – Federal Judicial Selection – Josie (9/26) and Ruben (9/28)

- September 26** The American Bar Association’s Role in Selection
--Smelcer, Susan, Amy Steigerwalt, and Richard Vining. 2012. “Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees.” *Political Research Quarterly* 65(4): 827-840.
--Sieja, “How You Rate Depends on Who Investigates: Partisan and Other Biases in ABA Ratings of US Courts of Appeals Nominees.”*

Research Reading – King, Gary. 2006. “Publication Publication.” *PS: Political Science and Politics* 39(1): 119-125

- September 28** Getting Picked
--Nemacheck, *Strategic Selection: Presidential Nomination of Supreme Court Justices from Herbert Hoover through George W. Bush*, Introduction and Chapter 6*
--Black, Ryan C., and Ryan J. Owens. 2016. “Courting the President: How Circuit Judges Alter Their Behavior for Promotion to the Supreme Court.” *American Journal of Political Science* 60: 30-43.

Research Reading – Epstein and Martin, Chapter 4

Week V – Confirmation Hearings – Henry (10/5)

- October 3** No class meeting. Meet individually with Dr. Sieja to discuss research question and begin a research strategy.

- October 5** --Dancey, Logan, Kjersten Nelson, and Eve Ringsmuth. 2014. "Individual Scrutiny or Politics as Usual? Senatorial Assessment of U.S. District Court Nominees." *American Politics Research* 42: 784-814.
- Sieja, "Talkin' About My Qualifications: Adjusted ABA Ratings and Circuit Court Confirmation Hearing Discourse, 1997-2012," p. 1-34.*

Research Reading - Binder, "Advice and Consent in a Polarized Era: Time to Pull a Normative Alarm?" in *Making Law and Courts Research Relevant: The Normative Implications of Empirical Research*, p. 99-106*

(The Long) Week VI - State Judicial Selection - Nick (10/10) and Joe (10/17)

- October 10** --Hall, Melinda Gann. 1987. "Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study." *Journal of Politics* 49: 1117-1124.
- Canes-Wrone, Brandice, Tom Clark, and Jason Kelly. 2014. "Judicial Selection and Death Penalty Decisions." *American Political Science Review* 108: 23-39.

Research Reading - Baglione, Chapter 3

October 12 *Fall Break, no class meeting*

- October 17** --Bonneau and Hall, *In Defense of Judicial Elections*, Chapters 1 & 4*
- Gibson, James L. 2008. "Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and 'New Style' Judicial Campaigns." *American Political Science Review* 102(1): 59-76.

Research Reading - None

Annotated bibliography due October 18 by noon.

(The Short) Week VII - Agenda Setting at the U.S. Supreme Court - Cameron (10/19)

- October 19** --Owens, Ryan J., and James A. Sieja. 2017. "Agenda-Setting on the United States Supreme Court." In *The Oxford Handbook of U.S. Judicial Behavior*, Lee Epstein and Stefanie Lindquist, eds.*
- Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 84(4): 1109-1127.

Research Reading - Baglione, Chapter 4

Week VIII - Research Design Week

- October 24** Research Readings
- Baglione, Chapter 5
- Baglione, Chapter 7

- October 26** Research Readings
 --Epstein and Martin, Chapter 5
 --Epstein and Martin, Chapter 6
 --Seawright, Jason, and John Gerring. 2008. "Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options." *Political Research Quarterly* 61(2): 294-308.

Week IX - Law Clerks - Zach (11/2)

- October 31** No class meeting. Hand in literature review by 11:40am.
- November 2** --Distlear, Corey, and Lawrence Baum. 2001. "Selection of Law Clerks and Polarization in the U.S. Supreme Court." *Journal of Politics* 63: 869-885.
 --Swanson, Rick A., and Stephen L. Wasby. 2008. "Good Stewards: Law Clerk Influence in State High Courts." *Justice System Journal* 29(1): 24-46
- Research Reading - Bartels and Bonneau, "Can Empirical Research Be Relevant to the Policy Process? Understanding the Obstacles and Exploiting the Opportunities," in *Making Law and Courts Research Relevant**

Week X - Precedent - Tom (11/7) and Kenesa (11/9)

- November 7** --Knight, Jack, and Lee Epstein. 1996. "The Norm of *Stare Decisis*." *American Journal of Political Science* 40(4): 1018-1035.
 --Lindquist, Stefanie, and David Klein. 2006. "The Influence of Jurisprudential Considerations on Supreme Court Decision Making: A Study of Conflict Cases." *Law & Society Review* 40: 135-161.
- Research Reading - None. Research design due in class.
- November 9** --Richards, Mark, and Herbert Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96(2): 305-320.
 --Lax, Jeffrey, and Kelly Rader. 2010. "Legal Constraints on Supreme Court Decision Making: Do Jurisprudential Regimes Exist?" *Journal of Politics* 72(2): 273-284.
- Research Reading - None. The previous two items will be hard enough. But now that your research design is complete, start (if you haven't already) aggressively skimming chapters 7 through 12 in Epstein and Martin to see what applies to your project.

Week XI - Law and Politics Grab Bag - Taylor (11/14) and Kiki (11/16)

- November 14** --Black, Ryan C., and Ryan J. Owens. 2011. "Solicitor General Influence and Agenda Setting on the U.S. Supreme Court." *Political Research Quarterly* 64(4): 765-778.
 --Badas, Alex. 2016. "The Public's Motivated Response to Supreme Court Decision-Making." *Justice System Journal* 37(4): 318-330.
- Research Reading - None. Now you've had a whole weekend to skim the heck out of chapters 7 through 12 in Epstein and Martin. Continue to think about how you could apply those chapters to your work and ask questions about them.

- November 16** –Wood, Sandra L., Linda Camp Keith, Drew Noble Lanier, and Ayo Ogundele. 1998. “‘Acclimation Effects’ for Supreme Court Justices: A Cross-Validation, 1888-1940.” *American Journal of Political Science* 42(2): 690-697.
–Wagner, “Dissent on U.S. State Supreme Courts: Measuring Contextual and Gender-Based Differences”
Research Reading – Baglione, Chapter 8

Thanksgiving Break, no class meeting

Week XII – The Beginning and the End of the Road – Dameian (11/28)

- November 28** –Redding, Richard E. 2003. “‘Where Did You Go to Law School?’ Gatekeeping for the Professoriate and Its Implications for Legal Education.” *Journal of Legal Education* 53(4): 594-614.
–Ward, *Deciding to Leave: The Politics of Retirement from the United States Supreme Court*, Chapters 1, 9-10*
Research Reading – Baglione, Chapter 9

- November 30** No class meeting. Finalize first draft. Dr. Sieja available for individual meetings. First draft due to peer reviewer and Dr. Sieja by 9pm on December 1.

Week XIII

- December 5** Peer review meetings in class. Send your review to your partner and Dr. Sieja by 9pm on December 3.
- December 7** No class meeting. Individual meetings with Dr. Sieja. Work on polishing final drafts.
Research Reading – Baglione, Chapter 6

Week XIV

- December 12** Research presentations
- December 14** Research presentations

Final Paper Due: December 19, 4:30pm T