

Introduction to the Rule of Law
PSCI 7071
F 9:00 - 11:30 AM, KTCH 1B31

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Hours:	W 2:00–3:00 PM, or by appt.



This course introduces students to debates about the role of institutions, particularly but not exclusively legal institutions, in placing limits on the state and fostering the rule of law. What is law? Why do courts exist and what is their role in the state? What institutions are necessary to establish the rule of law? Why are institutions successful in some contexts and not others? The goal of this course is to consider these broad theoretical questions, but to approach them in a grounded way that takes seriously what we actually know about the day-to-day operations of courts and the pressures and incentives that they face when making decisions. To that end, we will read a combination of ‘big picture’ work on the role of courts in the state and features of institutional design, as well as take a deep dive into literatures in American and comparative politics that consider judicial decisionmaking—with the end goal of understanding how these two threads of research speak to one another.

Grading and Assignments:

Preparation and Participation 15%

Students are expected to come to class prepared and take part in discussions. Seminars are a collaborative effort; seminar discussion will take up the vast majority of our time together, and quality discussion is dependent on all of us coming together to share thoughts and insights on the course material. You should come to class having read and thought hard about the week’s assigned papers, and be an active participant in seminar discussions. In assessing participation I will consider both the quality and quantity of your efforts. Attendance is mandatory except in cases of illness or family emergency. Any unexcused absences will result in a penalty of 5 points from your final average.

Dataset Report 10%

To help familiarize students with some of the research resources available in the subfield, students are required to prepare a brief memo summarizing the contents of a publicly available dataset that is, broadly speaking, relevant to the study of judicial politics. You should download and explore the data, making note of anything interesting that you find. The memo should be around 1–2 pages, and should clearly state the unit of analysis, the coverage of the dataset in terms of countries/years, etc., and should highlight any theoretically interesting variables or features. You should also point out any problematic

features of the dataset, such as missing data or important variables that are absent from the file. Finally, conclude the memo by assessing the overall usefulness of the data, and noting what kinds of research questions or scholarship it would be most appropriate for. You should try to choose datasets with broad utility, rather than, e.g., replication datasets associated with single articles. The Dataset Report is due on February 23rd, and we will set aside some time for each student to give a brief overview of their dataset to the rest of the class.

Research Proposal (5) 35%

To encourage you to think about how to contribute to the literatures we read, you are required to write *five* short (2–4 pages, double spaced) papers proposing a potential research project in some of the topic areas we will examine during the semester. Essentially, I want you to pitch a project to me that you see as contributing to a particular week’s literature. Your proposal should address the following elements. 1) What is the research question? Be as clear and precise as possible. 2) Give a clear *theory*. That is, provide some process-based explanation for how you expect actors to behave in the setting being considered. 3) Describe the analytical approach you would hope to pursue. What kind of data would you collect and analyze? 4) Why bother? Why should I or anyone else want to read your proposed paper? Here you should address the potential contribution of the paper. You should address both the normative importance of your question as well as its novelty within the relevant literature. Research proposals are due at the beginning of class on the day we discuss the relevant topic.

Final Paper 35%

You will develop a research paper related to some topic relevant to the course. The paper should provide a clear research question, and develop an analytical approach appropriate to that question. You should view this paper as an opportunity to develop an idea that may turn into a publishable research project. We will discuss expectations for the paper in detail in class. The paper is due in class on April 26th.

Final Paper Proposal 5%

Students are required to turn in a 2–4 page paper proposal writeup on March 22nd, the week before spring break. This proposal should identify your research question and provide a sketch of how you plan to answer that question, similar to the Research Proposals, but should be directed at a topic that you intend to pursue as your final paper for the course. If you have already written up the idea you wish to pursue for another week’s Research Proposal, you may do so; just let me know and turn in another copy of the proposal (or an amended one) for my reference. I will evaluate your proposals for substantive interest and feasibility and provide feedback as we settle on your paper topic.

Grading Scheme: I use the following grade categories for calculating final letter grades, and do not round up.

A: 94 and above, A-: 90–94, B+: 87–90, B: 84–87, B-: 80–84, C+: 77–80, C: 74–77, C-: 70–74, D+: 67–70, D: 64–67, D-: 60–64, F: 60 and below.

Late Work Policy: Assignments with fixed due dates will be penalized 5 points per day late. Weekly research proposal assignments will not be accepted late. If illness or family emergency prevents you from completing an assignment on time, these penalties may be waived.

Email Policy: I will try to answer all class-related emails within one business day of receiving them. Please be advised that I am not on-call 24/7; emails sent after 5:00p on weekdays, or any time during weekends or breaks, will generally not be seen or responded to until the next business day. If you need to communicate with me about a time-sensitive matter it is up to you to communicate it to me during regular working hours.

Class Schedule and Required Readings:

The following is a tentative schedule. We may depart from it if we get behind or if there is a need to spend more time on particular topics. Any changes to the schedule will be announced in class. Assigned book chapters will be made available on the course's Canvas site.

Jan. 19 Introduction

Big-Picture Questions

Jan. 26 Courts and the Rule of Law
Required readings:

- Carothers, Thomas. 1998. "The Rule of Law Revival", *Foreign Affairs*
- Waldron, Jeremy. 2011. "The Rule of Law and the Importance of Procedure," *Nomos*
- Weingast, Barry. 1997. "The Political Foundations of Democracy and the Rule of Law", *American Political Science Review*
- Shapiro, Martin. 1981. *Courts: A Comparative and Political Analysis*, Ch. 1

Feb. 2 Judicial Independence
Required readings:

- North, Douglass, and Barry Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England", *Journal of Economic History*
- Ferejohn, John. 1999. "Independent Judges, Dependent Judiciary: Explaining Judicial Independence", *Southern California Law Review*
- Feld, Lars and Stefan Voigt. 2003. "Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators", *CESifo Working Paper*

- Melton, James and Tom Ginsburg. 2014. "Does De Jure Judicial Independence Really Matter?" *Journal of Law and Courts*
- Gibler, Doug and Kirk Randazzo. 2011. "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding", *American Journal of Political Science*

Feb. 9 Judicial Review
Required readings:

- Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as National Policy Maker", *Journal of Public Law*
- Vanberg, Georg. 2005. *The Politics of Constitutional Review in Germany*, Chs. 2, 4
- Clark, Tom. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy", *American Journal of Political Science*
- Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, Ch. 1–3
- Whittington, Keith. 2005. "Interpose Your Friendly Hand: Political Supports for the Exercise of Judicial Review by the United States Supreme Court", *American Political Science Review*
- Hall, Matthew and Joseph Ura. 2015. "Judicial Majoritarianism", *Journal of Politics*

Major Topics in Judicial Politics

Feb. 16 Supreme Court Behavior
Required readings:

- Rohde, David and Harold Spaeth. 1975. *Supreme Court Decision Making*, Chs. 4, 7
- Segal, Jeffrey and Harold Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*, Chs. 3, 7, 8 (selected portions)
- Maltzman, Forrest, Jim Spriggs and Paul Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*, Chs. 4–5
- Bailey, Michael. 2013. "Is Today's Court the Most Conservative in Sixty Years? Challenges and Opportunities in Measuring Judicial Preferences", *Journal of Politics*
- Caldeira, Gregory and Jack Wright. 1988. "Organized Interests and Agenda Setting in the US Supreme Court", *American Political Science Review*
- Perry, H.W. 1991. *Deciding to Decide*, Ch. 8.

Feb. 23 Can Courts be Effective Policymakers?
DATASET REPORT DUE

Required readings:

- Rosenberg, Gerald. 1991. *The Hollow Hope*, Chs. 1–2, 4
- Zemans, Frances Kahn. 1983. "Legal Mobilization: The Neglected Role of the Law in the Political System," *American Political Science Review*
- McCann, Michael. 1994. *Rights at Work*, Chs. 1, 3

- Epp, Charles. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*, Chs 1–2, 6.
- Hall, Matthew. 2010. *The Nature of Supreme Court Power*, Chs. 3, 5, 7 (portions)

Mar. 1 Are Judges Constrained by the Law?

Required readings:

- Posner, Richard. 1990. "The Problems of Jurisprudence", Ch. 1
- Edwards, Harry. 2003. "The Effects of Collegiality on Judicial Decisionmaking", *University of Pennsylvania Law Review*
- Bailey, Michael and Forrest Maltzman. 2008. "Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court" *American Political Science Review*
- Bartels, Brandon. 2009. "The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court", *American Political Science Review*
- Richards, Mark and Herbert Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making", *American Political Science Review*
- Bartels, Brandon and Andrew O'Geen. 2015. "The Nature of Legal Change on the U.S. Supreme Court: Jurisprudential Regimes Theory and Its Alternatives", *American Journal of Political Science*

Contemporary Debates

Mar. 8 Public Legitimacy and its Origins

Required readings:

- Gibson, Jim, Greg Caldeira, and Lester Kenyatta Spence. 2003. "Measuring Attitudes Toward the U.S. Supreme Court," *American Journal of Political Science*
- Baird, Vanessa. 2001. "Building Institutional Legitimacy: The Role of Procedural Justice", *Political Research Quarterly*
- Carrubba, Cliff. 2009. "A Model of the Endogenous Development of Judicial Institutions in Federal and International Systems", *Journal of Politics*
- Staton, Jeff. 2006. "Constitutional Review and the Selective Promotion of Case Results", *American Journal of Political Science*
- Bartels, Brandon and Eric Kramon. 2020. "Does Public Support for Judicial Power Depend on Who is in Political Power? Testing a Theory of Partisan Alignment in Africa," *American Political Science Review*

Mar. 15 Dynamics of Public Opinion and Supreme Court Decisionmaking
PAPER PROPOSAL DUE

Required readings:

- Giles, Micheal, Bethany Blackstone, and Rich Vining. 2008. "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making", *Journal of Politics*

- Gibson, Jim, Greg Caldeira, and Lester Kenyatta Spence. 2003. "The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science*
- Bartels, Brandon and Christopher Johnson. 2013. "On the Ideological Foundations of Supreme Court Legitimacy in the American Public", *American Journal of Political Science*
- Gibson, Jim and Michael Nelson. 2015. "Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science*
- Bartels, Brandon. 2020. *Curbing the Court: Why the Public Constrains Judicial Independence*, Ch. 3

Mar. 22 Public Opinion and the Court in a Polarized Era
Required readings:

- Christenson, Dino and David Glick. 2019. "Reassessing the Supreme Court: How Decisions and Negativity Bias Affect Legitimacy", *Political Research Quarterly*
- Bartels, Brandon. 2020. *Curbing the Court: Why the Public Constrains Judicial Independence*, Chs. 6–7
- Driscoll, Amanda and Michael Nelson. 2023. "The Costs of Court Curbing: Evidence from the United States," *Journal of Politics*
- Gibson, Jim. n.d. "Losing Legitimacy: The Challenges of the Dobbs Ruling to Conventional Legitimacy Theory," Working Paper
- Strayhorn, Josh. n.d. "Judicial Legitimacy and the Dynamics of Belief Formation," Working Paper

Mar. 29 NO CLASS (Spring Break)

Apr. 5 Separation-of-Powers Constraints

NOTE: Will need to reschedule our meeting time due to MPSA

Required readings:

- Ramseyer, J. Mark and Eric Rasmusen. 2001. "Why are Japanese Judges So Conservative in Politically Charged Cases?" *American Political Science Review*.
- Harvey, Anna and Barry Friedman. 2006. "Pulling Punches: Congressional Constraints on the Supreme Court's Constitutional Rulings, 1987–2000", *Legislative Studies Quarterly*
- Owens, Ryan. 2010. "The Separation of Powers and Supreme Court Agenda Setting", *American Journal of Political Science*
- Segal, Jeff, Chad Westerland and Stef Lindquist. 2011. "Congress, the Supreme Court, and Judicial Review: Testing a Constitutional Separation of Powers Model", *American Journal of Political Science*
- Hall, Matthew. 2014. "The Semiconstrained Court: Public Opinion, the Separation of Powers, and the U.S. Supreme Court's Fear of Nonimplementation", *American Journal of Political Science*

Apr. 12 Judicial Hierarchy

Required readings:

- Cameron, Chuck, Jeff Segal and Donald Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions", *American Political Science Review*
- Stefanie Lindquist, Susan Haide, and Donald Songer. 2007. "Supreme Court Auditing of the US Courts of Appeals: An Organizational Perspective", *Journal of Public Administration Research and Theory*
- Kastellec, Jon. 2011. "Hierarchical and Collegial Politics on the U.S. Courts of Appeals", *Journal of Politics*
- Beim, Deborah. 2017. "Learning in the Judicial Hierarchy", *Journal of Politics*
- Strayhorn, Josh. 2023. "Lower Courts in Interbranch Conflict", *Journal of Law and Courts*

Apr. 19 Judicial Selection
Required readings:

- Cameron, Chuck and Jon Kastellec. 2016. "Are Supreme Court Nominations a Move-the-Median Game?" *American Political Science Review*
- Cameron, Chuck and Jon Kastellec. n.d. "Simulating the Future Ideological Composition of the Supreme Court" Working Paper
- Geyh, Charles. 2003. "Why Judicial Elections Stink", *Ohio State Law Journal*
- Canes-Wrone, Brandice, Tom Clark, and Amy Semet. 2018. "Judicial Elections, Public Opinion, and Decisions on Lower-Salience Issues", *Journal of Empirical Legal Studies*
- Arrington, Nancy, et al. 2021. "Constitutional Reform and the Gender Diversification of Peak Courts," *American Political Science Review*

Apr. 26 Open Week
FINAL PAPER DUE

Required readings: We will choose a topic as a group and I will email out a reading list.

University Policies

Classroom Behavior: Students and faculty are responsible for maintaining an appropriate learning environment in all instructional settings, whether in person, remote or online. Those who fail to adhere to such behavioral standards may be subject to discipline. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation or political philosophy. For more information, see the classroom behavior policy, the Student Code of Conduct, and the Office of Institutional Equity and Compliance. (URLs for these and other university resources below may be found in the digital copy of the syllabus on the course Canvas page.)

Requirements for Infectious Diseases: Members of the CU Boulder community and visitors to campus must follow university, department, and building health and safety requirements and all public health orders to reduce the risk of spreading infectious diseases.

The CU Boulder campus is currently mask optional. However, if masks are again required in classrooms, students who fail to adhere to masking requirements will be asked to leave class. Students who do not leave class when asked or who refuse to comply with these requirements will be referred to Student Conduct & Conflict Resolution. Students who require accommodation because a disability prevents them from fulfilling safety measures related to infectious disease will be asked to follow the steps in the “Accommodation for Disabilities” statement on this syllabus.

For those who feel ill and think you might have COVID-19 or if you have tested positive for COVID-19, please stay home and follow the further guidance of the Public Health Office. For those who have been in close contact with someone who has COVID-19 but do not have any symptoms and have not tested positive for COVID-19, you do not need to stay home.

Accommodation for Disabilities:

Disability Services determines accommodations based on documented disabilities in the academic environment. If you qualify for accommodations because of a disability, submit your accommodation letter from Disability Services to your faculty member in a timely manner so your needs can be addressed. Contact Disability Services at 303-492-8671 or dsinfo@colorado.edu for further assistance.

If you have a temporary medical condition or required medical isolation for which you require accommodation, please let me know as soon as possible, and we will discuss a resolution (such as rescheduling or waiving assignments) specific to your individual circumstances. Also see Temporary Medical Conditions on the Disability Services website.

Preferred Student Names and Pronouns: CU Boulder recognizes that students’ legal

information doesn't always align with how they identify. Students may update their preferred names and pronouns via the student portal; those preferred names and pronouns are listed on instructors' class rosters. In the absence of such updates, the name that appears on the class roster is the student's legal name.

Honor Code: All students enrolled in a University of Colorado Boulder course are responsible for knowing and adhering to the Honor Code. Violations of the Honor Code may include but are not limited to: plagiarism (including use of paper writing services or technology [such as essay bots]), cheating, fabrication, lying, bribery, threat, unauthorized access to academic materials, clicker fraud, submitting the same or similar work in more than one course without permission from all course instructors involved, and aiding academic dishonesty.

All incidents of academic misconduct will be reported to Student Conduct & Conflict Resolution: honor@colorado.edu, 303-492-5550. Students found responsible for violating the Honor Code will be assigned resolution outcomes from the Student Conduct & Conflict Resolution as well as be subject to academic sanctions from the faculty member. Visit Honor Code for more information on the academic integrity policy.

Sexual Misconduct, Discrimination, Harassment and/or Related Retaliation: CU Boulder is committed to fostering an inclusive and welcoming learning, working, and living environment. The university will not tolerate acts of sexual misconduct (harassment, exploitation, and assault), intimate partner violence (dating or domestic violence), stalking, or protected-class discrimination or harassment by or against members of our community. Individuals who believe they have been subject to misconduct or retaliatory actions for reporting a concern should contact the Office of Institutional Equity and Compliance (OIEC) at 303-492-2127 or email cureport@colorado.edu. Information about university policies, reporting options, and the support resources can be found on the OIEC website.

Please know that faculty and graduate instructors have a responsibility to inform OIEC when they are made aware of incidents of sexual misconduct, dating and domestic violence, stalking, discrimination, harassment and/or related retaliation, to ensure that individuals impacted receive information about their rights, support resources, and reporting options. To learn more about reporting and support options for a variety of concerns, visit Don't Ignore It.

Religious Holidays: Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. Please let me know about any conflicts with exam dates with at least two weeks notice, and I will make every effort to provide an alternative exam time.

See the campus policy regarding religious observances for full details.

Mental Health and Wellness: The University of Colorado Boulder is committed to the

well-being of all students. If you are struggling with personal stressors, mental health or substance use concerns that are impacting academic or daily life, please contact Counseling and Psychiatric Services (CAPS) located in C4C or call (303) 492-2277, 24/7.

Free and unlimited telehealth is also available through Academic Live Care. The Academic Live Care site also provides information about additional wellness services on campus that are available to students.