

PBPL 401-01
The Supreme Court & Public Policy
Spring 2025

Public Policy & Law Program
Trinity College

1 Instructor Information

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Office Hours: Mondays 4:45pm-5:45pm

Tuesdays: 2:00pm-4:00pm

Wednesdays: 2:00pm-4:00pm

and by appointment

Class Location: McCook 305

Course Time: 1:30-4:10 Mondays

2 Course Description and Purpose

Writing in 1835, Alexis de Tocqueville observed, “there is hardly any political question in the United States that sooner or later does not turn into a judicial question.” Over the past 190 years, history has seemingly validated de Tocqueville. Virtually every major policy dispute from slavery, to Social Security, to civil rights, and same sex marriage, has ended up on the Court’s docket. Thus, in order to adequately explain public policy, it is critical to explore judicial decision making.

So, how do courts decide? In our republican system of government the courts are the guardians of the Constitution. Clad in robes, judges project an aura of being above the fray of partisan politics. But, jurists can only work with the information brought to them and they face political, legal, and institutional constraints. How then, do judges make their decisions? What other actors and institutional structures shape their decision-making process? The answer to this question is deeply nuanced and we will explore the answers those nuances through the actors and institutional structures of the judiciary.

In this course, we will focus on the courts as both legal and political institutions, with an emphasis on how individual level factors interact with politics, law, and context to shape outcomes. While much of our time will be dedicated to the study of the U.S. Supreme Court, we will also address the role and function of lower courts at the federal, state, and international levels.

This class is a senior seminar. So, we will eschew the traditional lecture format for a seminar style discussion of the material. Each week, a different pair of students will lead the discussion (don’t worry, I will model how to do it and I’ll meet with you in advance). Moreover, you’ll take the sum of your experiences at Trinity to develop a seminar paper that explores some aspect of judicial behavior that is of most interest to you.

A key component of this class are your critical reading, writing, and organizational skills. Toward that end, we will read several scholarly articles over the course of the semester in addition to the more conventional textbook, to help build your critical thinking skills. I realize the scholarly literature can be daunting. To this end, we will step through each of these articles in class. Since

writing is a vital skill that is important regardless of your major or eventual career, you will produce a synthesis paper which explores an aspect of judicial behavior in greater depth. Feedback and direction will be provided on the synthesis paper throughout the semester.

Student Learning Outcomes

On completion of this course students will be able to:

1. Actively engage in critical discussions about the judiciary and the academic literature on it.
2. Develop strong research skills to locate and synthesize scholarly literature.
3. Read and synthesize the scholarly literature on judicial behavior through an applied writing exercise.
4. Engage the literature by describing and critique it to scholarly audiences in both written and verbal form.

3 Course Format

This course is a seminar; think of each of our meetings as a discussion rather than a lecture. To make this work, it is critical you read in advance. You don't have to know every article inside-out, but jot down your impressions. Notate any questions you might have, and be sure to preview the discussion questions in advance of our meeting. It is okay if you don't understand them fully, but please give it your best effort and come to class with the questions you have.

4 Requirements

Text

There are *no required textbooks for this class*. We will read a combination of journal articles and chapters from *Open Judicial Politics*. All readings are posted on Moodle.

1. Solberg, Rorie Spill, Jennifer Segal Diascro, and Eric Waltenburg 2023. *Open Judicial Politics*. Corvallis, OR: Oregon State University, <https://open.oregonstate.edu/open-judicial-politics/>

Assessment

This course is worth 100 points which are broken up over several different items

- Synthesis Paper: 55 points
- Conference Presentation Project: 10 points
- Reading Discussion Forum: 10 points
- Discussion Leader Project: 10 points

- Participation: 15 points
1. **Synthesis Paper (55 points)**— Instead of a research paper, you will produce a synthesis paper that overviews the scholarly literature in one area of judicial behavior. For instance, you might be really interested in judicial elections or the role attorney gender plays in judicial decision making. I encourage you to write on the topic you find most interesting (research is more fun when you enjoy what you're researching!). Since this is a big project, it will be broken up into several smaller assignments spaced roughly evenly over the course of the semester. I will provide you feedback at each step along the way, which will help guide you as you move forward. More details are provided in the Synthesis Paper Project handout on Moodle.
 2. **Conference Presentation Project (10 points)**— As you wrap up your Synthesis Paper Project you will prepare a 10 minute presentation overviewing the project. While presenting a project is a key skill for any career; so too is constructively critiquing others' work. More details are on the handout on Moodle.
 3. **Discussion Leader Project (10 points)**— In a seminar, the professor does not talk the whole time. Rather, I will give a brief (20 minutes or so) "mini lecture" on the topic. Then, we will turn to a conversation about the readings. Our discussion will be guided by a set of discussion questions. For one week of the semester, you will work with a partner to lead the discussion. This will require reading in advance. I encourage you to send your questions to me in advance. More details are on the handout on Moodle.
 4. **Discussion Question Engagement (10 points)**— Seminars require more preparation than a typical lecture class. This requires reading closely in advance and considering the discussion questions. A good way to do this is to preview the discussion questions and jot down some notes and preliminary thoughts. We will do this in discussion forums on Moodle. More details are on the handout on Moodle.
 5. **Participation (15 points)**— Seminars thrive on a spirited discussion about the material. To this end, the participation grade measures the extent to which you engage your classmates' questions and points. I do want to stress though, this isn't about making yourself look smart. Rather it is sharing your thoughts and also helping your classmates with the material. Be kind, be collaborative, and be supportive. I am aware, however, that not everyone is an outgoing person that enjoys talking. To this end, I consider active listening to be an element of participation too.

Assessment Scale

| | | | | | |
|------------|-------------|-------------|------------|-------------|--------------|
| A: >94 | A-: 90-93.9 | B+: 87-89.9 | B: 84-86.9 | B-: 80-83.9 | C+ : 77-79.9 |
| C: 74-76.9 | C-: 70-73.9 | D+: 67-69.9 | D: 64-66.9 | D-: 60-63.9 | F: <60 |

Sensitive Topics

Since public policy & law are reflections of the society in which we live, we will cover several topics which touch on topics which might be sensitive such as the role of sexual assault allegations in judicial confirmation hearings, LGBTQIA+ rights, and litigation over the constitutionality of abortion. These topics are included because we cannot adequately study the topic without covering

them. My personal policy is to remain neutral (I'm a political scientist, emphasis on the second word). I encourage disagreement, but it must be done in a respectful way. You have my assurance that I will do everything reasonably related to keeping these discussions civil and academic. I know aspects of this course may be emotionally difficult. You may personally connect with or be affected by some of the material covered in this course, so I urge you to identify a support system outside of this class. I am happy to meet with you to discuss any concerns or accommodation needs, but I also encourage you to seek out confidential or other resources.

5 Course Policies

Contacting the Instructor

I am happy to help you either via e-mail, office telephone, or in-person during office hours. Of course, if office hours do not fit your schedule let me know and we can schedule a meeting at a time that is more convenient. If you come to office hours you should come prepared; bring your book, notes, and read the material in advance. If you contact me via e-mail, I will respond within 48 hours, though in most cases it will be faster. However, in any e-mail you must identify yourself and use proper format which consists of an opening (As simple as the recipient's name), a closing (as simple as your name), and a descriptive subject line. If you do not follow that convention or if you use Internet shorthand (ie: "u" instead of "you,") I will not reply to the message. Telephone calls will be returned as soon as possible, though e-mail is usually quicker. Please note, the phone number listed is my office phone; it cannot receive text messages.

Make-up Exams and Assignments

To qualify for a make-up test a student must notify me of the absence in advance via e-mail and provide documentation. Make-up exams will be a written research paper.

Academic Honesty & Plagiarism

A crucial component of academic writing is effective use of sources. Using the words or ideas of others without granting them credit constitutes plagiarism. Plagiarism is not permitted on any assignment, whether a short entry on Moodle, a draft, a prospectus, or a final submission. Incidents of plagiarism and academic dishonesty will be addressed in accordance with college policies (Student Handbook) and may result in a failing grade and/or more serious consequences. Trinity asks that students sign a declaration on academic honesty at the beginning of the semester, which we will complete after the first day of class.

This class aims to equip you with critical thinking and writing skills, which can only be gained through practice. Therefore, you should independently draft and refine your own written work without using artificial intelligence or other shortcuts.

Please contact me with any questions regarding use of sources and, when in doubt, acknowledge assistance and cite.

Artificial Intelligence

Use of an AI Generator such as ChatGPT, MidJourney, DALL-E, etc. is explicitly prohibited in this class. The information derived from these tools is based on previously published materials. Therefore, using these tools without proper citation constitutes plagiarism. Additionally, be aware that the information derived from these tools is often inaccurate or incomplete. It's imperative that all work submitted should be your own. Any assignment that is found to have been plagiarized or to have used unauthorized AI tools may receive a zero and or be reported for academic misconduct.

Collaboration

As part of this class you will give feedback to your peers. Indeed, one of the best ways to learn methods is to learn from others and share what you know. You may discuss readings with classmates outside of class and consult associates at the Writing Center. Where such discussion or guidance significantly shapes your written product, students should acknowledge assistance in a footnote, in line with academic conventions. While discussion of ideas and peer review is strongly encouraged, **all writing and revising must be executed independently.**

Accommodations for Students with Disabilities

Trinity College is committed to creating an inclusive and accessible learning environment consistent with the Americans with Disabilities Act. Students with disabilities who may need some accommodation in order to fully participate in this class are urged to contact the Student Accessibility Resource Center as soon as possible to explore what arrangements need to be made to assure access. If you have approval for academic accommodations, please notify me by the end of week two of classes. For those students with accommodations approved after the start of the semester, a minimum of 10 days' notice is required. Student Accessibility Resources can be reached by emailing SARC@trincoll.edu.

Additional Assistance

As noted above, I am happy to see you for extra help by appointment. For additional assistance, you are encouraged to consult the Writing Center.

At the Trinity College Writing Center, specially trained peer tutors (called Writing Associates) will help you improve your writing no matter your skill level. Writers are welcome at all stages of the writing process, from the moment you receive an assignment, to when you've produced a draft, to the moment you're polishing up your final version. You can work with a Writing Associate in-person at 115 Vernon Street room 109, or upload your paper using our online scheduling system and receive feedback via an asynchronous eTutoring appointment. Visit the Writing Center web page for further information and procedures. Students can walk-in during our hours of operation or reserve appointments in advance online by registering here.

Aetna Quantitative Center: The Q-Center, located in MECC 172, is open for tutoring during the semester Mondays-Thursdays 4-10pm and Sundays 7-10pm. We usually offer support for QLIT 101, Calculus I, II, & III, Statistics, Economics 101 and 218, as well as other courses on demand. The Q-Center works primarily on a walk-in basis and we usually open for tutoring

the second or third week of classes. Students can check our website for the schedule and opening days. If you have any questions, please contact the Center's director, Kaitlyn Gingras at kaitlyn.gingras@trincoll.edu.

Student Equity and Emergency Fund: The Fund provides students with financial assistance for emergency expenses that are temporary, significant, unforeseen, and unavoidable. Emergency expenses include but are not limited to: textbooks and other essential academic expenses; medications and other costs related to emergency medical care; food insecurity; summer internship funding; educational testing for accommodations; travel costs related to a death or illness in the immediate family; or replacement of essential personal belongings due to fire, theft, or natural disaster. Additional details on applying for funds may be found [here](#).

Trinity College Policy on Sexual/Gender Discrimination: Title IX of the Education Amendments of 1972 (Title IX) is a federal civil rights law that prohibits discrimination on the basis of sex in educational programs and activities that receive federal financial assistance. Trinity College prohibits discrimination on the basis of sex in all of its programs and activities, including academics, employment, athletics, and other extracurricular activities. This prohibition includes gender-based harassment, sexual violence and other sexual harassment. Questions regarding Title IX may be referred to the College's Title IX Coordinator, Shannon Lynch, located at 208 Mather Hall, 300 Summit St. Hartford, CT 06106, or via email at titleixcoordinator@trincoll.edu. You can find more information [here](#) at the Title IX Office website

Classroom Courtesy

Classroom courtesy is an essential component of creating an effective learning environment. All students have the right to learn without unnecessary distractions. These distractions include: cell phones, talking during lectures (unless recognized by the instructor), reading newspapers, falling asleep, etc. If you need a cell phone for emergency purposes, leave it on vibrate. Entering and leaving are also significant sources of distraction. It is your responsibility to be on time and to stay for the entire period. In circumstances where you need to leave early, tell the instructor beforehand. Repeated disruptions of class will lead to a reduction in your final grade.

Most importantly, the syllabus includes many sensitive topics which can lead to strong feelings and heated debate. Because this is a college classroom, all discussion must be respectful and scholarly. This is to say you must be respectful, in both content and tone, of diverse opinions and not make personal or partisan attacks.

Acceptable Comments

- are respectful of diverse opinions and open to follow up questions and/or disagreement
- are related to class and/or the course material
- focus on advancing the discussion about issues related to the course and/or course material rather than personal beliefs, and
- are delivered in normal tones and a non-aggressive manner.

Unacceptable Comments

- are personal in nature. This includes attacks on a person's appearance, demeanor, or political beliefs.
- include interrupting the instructor or other students. Raise your hand and wait to be recognized.
- often use the discussion to argue for political positions and/or beliefs. If political discussions arise, they must be discussed in a scholarly way (see above).
- may include using raised tones, yelling, engaging in arguments with other students and being threatening in any manner.
- include ignoring the instructor's authority to maintain the integrity of the classroom environment.

Syllabus Change Policy

This syllabus is a guide for the course and is subject to change with advanced notice. These changes may come via e-mail. Make sure to check your university supplied email regularly. You are accountable for all such communications.

6 *Tentative* Course Schedule

A few notes about reading the course schedule:

- Please do the readings in the order listed on the syllabus
- “SDW” refers to the required Solberg, Diascro, & Waltenburg book
- “(B)” means that reading can be found on Blackboard

Course Introduction & Judicial Behavior Basics

Monday January 20– **MARTIN LUTHER KING, JR. DAY**

- *No readings; class does not meet*

Monday January 27– Introduction to the Course & Judicial Behavior Basics

- Epstein, Lee and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. Oxford University Press: New York. (chapter 1).
- Miller, Mark. 2015. *Judicial Politics*. “The Appellate Court Process.”

Models of Judicial Decision Making

Monday February 3– The Legal & Attitudinal Models

- Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly*. 47: 749-768.
- Rutowski, Adam G. 2024. "Constitutional Interpretation Styles of U.S. Supreme Court Justices." *Open Judicial Politics*.
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review*. 96(2):291-303.

Monday February 10– Judicial Selection in the Federal & State Courts

- Tuskai, Jacob E. 2021. "Judicial Selection in the United States: An Overview." *Judges Journal*. 60(4): 32-35.
- Cameron, Charles M., Albert D. Cover, and Jeffrey A. Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model." *American Political Science Review*. 84(2): 525-534.
- Hassett, Abigail V., Elizabeth A. Lane, and Jessica A. Schoenherr. 2024. "A Matter of Great Importance: Interest Groups, the Senate Judiciary Committee, and Supreme Court Confirmation Hearings." OJP
- Goelzhauser, Greg. 2016. *Choosing State Supreme Court Justices: Merit Selection and the Consequences of Institutional Reform*. Temple University Press. (ch 2).

Monday February 17– Attorneys

- Means, Taneisha Nicole, Ria Bhutani, Benjamin Fikhman, Simon LaClair, and Rory Stumpf. 2024. "Before the Robe: Diversity and State Court Judges' Paths to the Bench." *Open Judicial Politics*.
- Hofer, Scott and Susan Achury. 2024. "Examining Diversity, Inclusion, and Equity in the Legal Profession: An Analysis of Career Tracks and Representation." *Open Judicial Politics*.
- McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics*. 57:187-196.
- Pacelle, Richard. 2024. "The Solicitor General of the United States." *Open Judicial Politics*.

Monday February 24– The Court & the Political Branches

- Epstein, Lee and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. Oxford University Press: New York. (chapters 3 & 4).
- Miller, Mark C. 2024. "The Relationship between the Federal Courts and the Two Congressional Judiciary Committees." *Open Judicial Politics*.
- Ringsmuth, Eve and Timothy R. Johnson. 2013. "Supreme Court Oral Arguments and Institutional Maintenance." *American Politics Research*. 41:651-673.
- Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences of Politicization in the Solicitor General's Office." *Journal of Politics*. 71(1):224-237.

From Petition to Decision

Monday March 3– Getting the Court to Listen

- Lane Elizabeth, Jessica A. Schoenherr, Rachel A. Schutte, and Ryan C. Black. 2020. “Judicial Discretion and U.S. Supreme Court Agenda Setting.” *Open Judicial Politics*
- Caldeira, Gregory A. and John R. Wright. 1988. “Organized Interests and Agenda Setting in the U.S. Supreme Court.” *American Political Science Review*. 82: 1109-1126.
- Goelzhauser, Greg and Nicole Vouvalis. 2013. “State Coordinating Institutions and Agenda Setting on the U.S. Supreme Court.” *American Politics Research*. 41(5):819-838.
- Bryan, Amanda C. and Ryan J. Owens. 2017. “How Supreme Court Justices Supervise Ideological Distant States.” *American Politics Research*. 45(3):435-456.

Monday March 10– Briefs: The Workhorses of the Supreme Court

- Hazelton, Morgan L.W. and Rachael K. Hinkle. 2022. *Persuading the Supreme Court: The Significance of Briefs in Judicial Decision-Making*. University Press of Kansas (ch 1).
- Corley, Pamela C. 2008. “The Supreme Court and Opinion Content.” *Political Research Quarterly*. 61:468-478.
- Spriggs, James F. and Paul J. Wahlbeck. 1997. “Amicus Curiae and the Role of Information at the Supreme Court.” *Political Research Quarterly*. 50:365-386.
- Corley, Pamela C. and Justin Wedeking. 2014. “The (Dis)Advantage of Certainty: The Importance of Certainty in Language.” *Law & Society Review*. 48(1): 35-62.

Monday March 17– **SPRING BREAK**

- *Enjoy your break!*

Monday March 24– Oral Arguments

- Johnson, Timothy R. 2001. “Information, Oral Arguments, and Supreme Court Decision-Making.” *American Politics Research*. 29(4):331-351.
- Ringsmuth, Eve, Amanda C. Bryan, and Timothy R. Johnson. 2013. “Voting Fluidity and Oral Arguments on the U.S. Supreme Court.” *Political Research Quarterly*. 66:429-440.
- Gleason, Shane A. 2024. “Since You Put It That Way... Gender Norms and Interruptions at Supreme Court Oral Arguments.” *Social Science Quarterly*. 105(3): 582-596.
- Sorenson, Maron W. 2023. “Asking Versus Telling: The Supreme Court’s Strategic Use of Questions and Statements During Oral Arguments.” *Political Research Quarterly*. XX:1-14.

Monday March 31– The Conference & Opinion Writing

- Johnson, Timothy R., James F. Spriggs, II, and Paul J. Wahlbeck. 2005. “Passing and Strategic Voting on the U.S. Supreme Court.” *Law & Society Review*. 39 (June): 349-377.
- Feldman, Adam. 2017. “Opinion Construction in the Roberts Court.” *Law & Policy*.

39(2): 192-209.

- Wahlbeck, Paul J., James F. Spriggs, and Lee Sigelman. 2002. "Ghostwriters on the Court? A Stylistic Analysis of U.S. Supreme Court Opinion Drafts." *American Politics Research*. 30(2):166-192.
- Bryan, Amanda C. and Eve M. Ringsmuth. 2016. "Jeremiad or Weapon of Words?: The Power of Emotive Language in Supreme Court Dissents." *Journal of Law & Courts*. 4(1):159-185

The Lower Federal Courts & Comparative Courts

Monday April 7– The Lower Federal Courts

- Johnson, Susan W., Ronald Stidham, Kenneth L. Manning, and Robert A. Carp. 2024. "To Publish or Not Publish: Exploring Federal District Judges' Published Decisions." *Open Judicial Politics*.
- Martinek, Wendy L. 2008. "Appellate Workhorses of the Federal Judiciary: The U.S. Courts of Appeals." in *Exploring Judicial Politics*. Mark C. Miller ed. Oxford University Press: New York.
- Tillman, Elizabeth A. and Rachael K. Hinkle. 2018. "Of Whites and Men: How Gender and Race Impact Authorship of Published and Unpublished Opinion in the U.S. Courts of Appeals." *Research & Politics*. XX:1-7.
- Hitt, Matthew P. and Daniel Lempert. 2024. "Lower Court Opinion Writing Style and Certiorari at the U.S. Supreme Court." *Open Judicial Politics*

State Courts

Monday April 14– State Courts

- Brace, Paul and Melinda Gann Hall. 1995. "Studying Courts Comparatively: The View from the American States." *Political Research Quarterly*. 48(1): 5-29.
- Hall, Melinda Gann. 2014. "Representation in State Supreme Courts: Evidence from the Terminal Term." *Political Research Quarterly*. 67:335-346.
- Arrington, Nancy B. 2021. "Judicial Merit Selection: Beliefs About Fairness and the Undermining of Gender Diversity on the Bench." *Political Research Quarterly*. 74(4):1152-1167.
- Wilhelm, Teena, Richard L. Vining, and David Hughes. 2023. "Chief Justice Selection Rules and Judicial Ideology." *State Politics & Policy Quarterly*. 23(3): 267-282.

Monday April 21– Paper Presentations

Monday April 28– Paper Presentations

Final Exam: Upload Time TBA