

# International and Comparative Judicial Politics

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10 ECTS credits elective course for MA-students in Political Science

## Course Description

Courts are important institutions in both international and comparative politics. The judicialization of politics means that international and domestic courts are ruling on important political issues and checking the power of legislatures and governments. For instance, in 2022, the Supreme Court of the United States removed the federal protection of the right to abortion in the United States by overturning its 1973 *Roe v. Wade* ruling. In 2020, six Portuguese youth challenged 33 European states before the European Court of Human Rights for failing to adopt the urgent measures needed in response to limit climate change. The rulings of the European Court of Justice have for decades been important in advancing European integration.

Yet, judicial power is often limited by courts' reliance on other actors to implement their decisions and by their vulnerability to political attacks. Currently, efforts to undermine the independence of domestic courts is at the core of democratic backsliding in countries such as Poland and several international courts are threatened by backlash and resistance from important member states.

In this course, we will examine core political science questions concerning judicial decision making and judicial power: What explains the judicialization of politics? To what extent do ideological and strategic considerations influence how judges decide cases? Under what conditions are courts able to constrain other political actors? What is the policy impact of judicial decisions and what can judges do to increase their impact? The course does not focus on any particular set of courts or legal systems, but instead centres on these common sets of questions that animate the judicial politics literature concerned with international and domestic courts.

Through a set of five home assignments that will also serve as a portfolio exam, students will get hands-on experience linking theoretical constructs to empirical measures, identifying research questions from existing theoretical debates, and applying empirical methods to existing datasets.

# Learning Objectives

## Knowledge:

- After having completed the course, students will have knowledge about core questions, theories, and concepts in the study of judicial politics:
  - Political science theories about how judges decide cases
  - Limits and opportunities for judicial independence, judicial power, and judicial impact
  - What explains public support for courts and what can courts do to increase their support?
  - Data types and research methods frequently used to test predictions from theories of judicial politics

## Skills

- After having completed the course, students will be able to:
  1. Apply theoretical concepts to empirical cases
  2. Apply empirical methods to address theoretically relevant political science questions
  3. Identify research questions linked to larger theoretical debates

## General Competence:

- After having completed the course, students have experience:
  1. Receiving and providing feedback
  2. Critically evaluating theoretical and empirical claims encountered in journal articles

## Teaching

- 10 Lectures/Plenary Sessions:
  - Explain and elaborate key insights from assigned readings
  - Connect insights from readings to real-world examples
  - In-class discussions

## Compulsory Activities

- Home assignments:
  - Five home assignments (max. 1500 words each)
  - Focus on applying concepts to real-world cases, doing simple analyses, and identifying research questions
  - Peer feedback on home assignments

## Exam

- Revised home assignments should be submitted as a portfolio exam at the end of the course.
- Portfolio exams be submitted in English or in a Scandinavian language.
- Grades are awarded on a scale from A to F, where A is the best grade and F is a fail.

## Detailed Lecture Plan

### Session 1: (Why and how) Should Political Scientists Study Courts?

- Courts as political actors:
  - Deciding “who gets what, when, and how”
  - Settling disputes between and checking the power of other the branches/states
- Types of courts of primary interest to political scientists:
  - High courts with constitutional review powers
  - International courts reviewing state actions
  - Possibly also other courts?
- Key puzzles in judicial politics
  - Explanations of judicial decision-making
  - Limits and opportunities for judicial independence, authority, and impact
  - What makes people accept/support judicial power?
- Readings: [Kapiszewski and Taylor \(2008\)](#), [Shapiro \(1994\)](#), and [Staton and Moore \(2011\)](#)

## Session 2: The Politics of Judicial Decision-Making

- Longstanding debates about what judges do when they make decisions:
  - Applying the law?
  - Pursuing own attitudes/ideologies?
  - Adapting to strategic considerations?
- Important to take the judicial context seriously:
  - Judges dispose of cases and formulate rules for sorting cases based on their facts
  - Room for disagreement concerning the exact sorting rule and the relative weight of different types of facts
  - Always about the law, but considerable leeway for attitudes and strategic considerations to play a role
- Scaling methods to understand judicial ideologies
- Readings: [Lax \(2011\)](#) and [Voeten \(2007\)](#)

## Session 3: Gender and Judging

- Do male and female judges decide cases differently?
  - Lived experiences of judges might influence how judges decide cases independently of “ideological” considerations
  - Are there general differences between male and female judges or such differences limited to cases with a gender dimension?
  - To what extent are gender differences evidence of “bias”?
  - Readings: [Boyd, Epstein and Martin \(2010\)](#), [Voeten \(2021\)](#), and [Harris and Sen \(2018\)](#)

## Session 4: The Judicialization of Politics, Politicization of Courts

- Shift in power from legislatures to courts: Judges increasingly willing to make law, check the power of legislatures and executives, and to regulate political life
- Normative issues: is judicialization undemocratic? Is it a good thing that some decisions are left to the courts?

- Does the judicialization of politics lead to a politicization of the courts?
- Readings: [Ferejohn \(2002\)](#) and [Dahl \(1957\)](#)

## Session 5: Expanding Judicial Power: Delegation and Construction

- Politicians delegating power to the courts
  - Benefits now: Manage policy uncertainty, shift blame for unpopular decisions, enable credible commitments
  - Benefits in the future: Constrain future office holders
- Judges acting strategically to gradually expand their authority
- Readings: [Vanberg \(2015\)](#), [Popova \(2010\)](#) and [Moravcsik \(2000\)](#), useful to revisit [Staton and Moore \(2011, 565-570\)](#)

## Session 6: Judicial Appointments: Independence, Accountability, and Representation

- Different rules for selecting and retaining judges
- Tradeoff between accountability and judicial independence/autonomy
- Descriptive representation on the bench
- Readings: [Larsson et al. \(2022\)](#) and [Arrington et al. \(2021\)](#)

## Session 7: Judicial Independence under Separation of Powers

- Courts as “the weakest branch”
  - Lack power of sword and purse
  - Vulnerable to various forms of court-curbing
- When do courts still rule against the other branches?
  - Judicial legitimacy makes noncompliance costly
  - Fragmentation and super-majority requirements make legislative override unlikely

- Anticipation of government turnover creates incentives to defect from the current regime
- Readings: [Vanberg \(2001\)](#), [Larsson and Naurin \(2016\)](#), and [Helmke \(2002\)](#). Useful to revisit [Staton and Moore \(2011, 559-562\)](#).

## Session 8: Compliance and Judicial Impact

- Three forms of judicial impact:
  1. Compliance with judgments/orders by parties to the case
  2. Inspiring/incentivizing action by actors not party to the case
  3. Preemptive changes in anticipation of possible judicial review
- Readings: [Staton \(2004\)](#), [Helfer and Voeten \(2014\)](#), and [Pavone and Stiansen \(2022\)](#)

## Session 9: What can Judges Do to Increase their Impact?

- Courts are implementer-dependent, but may seek policy impact
- If courts enjoy public support, courts may enable compliance monitoring by the public
- “Judicial diplomacy” efforts to build support
- Readings: [Staton and Romero \(2019\)](#), [Gauri, Staton and Cullell \(2015\)](#), and [Squatrino \(2021\)](#)

## Session 10: Public Support for Courts

- Throughout the course, we have encountered “public support” as a condition for judicial power
- What drives such support for courts?
- Are courts losing support? If so, what can they do about it?
- Readings: [Bartels and Johnston \(2013\)](#), [Bartels and Kramon \(2020\)](#), and [Madsen et al. \(2021\)](#)

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