

SEMINAR IN LAW AND SOCIETY (LAW: 525)

Fall, 2009

Professor J. L. Gibson

Course Description:

This seminar is designed as a survey of important research areas within the broad subfield of “Empirical Law Studies.” Areas to be examined in the seminar include courts and public policy making; civil liberties and political tolerance; criminal justice; the legal profession; juries; legitimacy and compliance with law; law and social change; procedural justice; transitional justice; and comparative legal systems. The seminar will focus in general on understanding, synthesizing, and evaluating the broad range of empirical research conducted under the multidisciplinary rubric “law and society,” and in particular on research associated with the blossoming Empirical Legal Studies movement.

Meeting Times and Location:

Tuesdays, 16:15 – 19:15
Room 271

Grading Elements:

Class participation (20 %); final research paper (80 %; see below)
No final exam will be administered

Seminar Rules:

You must complete all of the assignments by the end of the term. I also observe all university drop and other deadlines. You should familiarize yourself with the university's rules on ethics and academic misconduct. I strictly adhere to these rules.

Contact Information:

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Required Books (all available in the bookstore):

- Bonneau, Chris W., and Melinda Gann Hall. 2009. *In Defense of Judicial Elections*. New York: Routledge.
- Gibson, James L., and Gregory A. Caldeira. 2009. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton, NJ: Princeton University Press.
- Haltom, William, and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago: University of Chicago Press.
- Macaulay, Stewart, Lawrence M. Friedman, and Elizabeth Mertz. 2007. *Law in Action: A Socio-Legal Reader*. New York: Foundation Press.
- Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change? Second Edition*. Chicago: University of Chicago Press.
- Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. 2006. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, DC: Brookings Institution Press.

Research Paper:

The research paper will constitute 80 percent of your final grade. You should select a topic within the broad rubric of law and society issues. I am very flexible as to the subject matter of your paper, and I believe it possible to transform virtually any of your substantive interests into a question of law, politics, and society. I encourage you to write either an empirical analysis of theoretically-derived hypotheses or design a research project, but I am willing to discuss and negotiate virtually any approach you want to take to your topic. You would profit most from an emphasis in your paper on hypothesis testing – either planning to test hypotheses or actually testing hypotheses. Depending upon your interests, I may have data – even very fresh data – available that you can analyze. Papers based on actual empirical analysis must be started early due to the inevitable difficulties of completing them in the course of a single term. Your paper should be a minimum of 35 pages and a maximum of 50 pages long, with these limits strictly enforced. You should use a standard format (e.g., 1 inch margins) in preparing your paper.

The final paper is due on **December 14, 2009**. You must turn the paper in to the Registrar by 4:00 p.m. on the 14th. Following Law School rules, there are severe penalties (e.g., one letter grade per day) for late papers (if they are accepted at all). Throughout the term, you will be required to give oral reports to me on the progress of your paper.

The general approach to writing this paper should be one of preparing an article for publication. You may wish to select a particular article you like and copy its style and organization. You should use a style manual in writing your paper. I do not care which one – but would recommend the style of the *Law and Society Review* – but you should select a style, and use it consistently.

READING ASSIGNMENTS

9/22 **Organizational Seminar**
Social Science Approaches to the Study of Law, Politics, and Society

9/29 **The Nature of Judicial Decision-Making: The Attitudinal Model**

Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. 2006. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, DC: Brookings Institution Press.

Martin, Andrew D., Kevin M. Quinn, Theodore W. Ruger, and Pauline T. Kim. 2004. "Competing Approaches to Predicting Supreme Court Decision Making." *Perspectives on Politics* 2 (#4, December): 761-767.

<http://www.sunysb.edu/polsci/jsegal/qualtable.pdf> Review this webpage

Macaulay, Freidman, and Mertz: Pp. 729-752, 777-789.

Gibson, James L. 2009. "Americans Quite Tolerant of Activist Judges." *Miller-McCune* [http://www.miller-mccune.com/legal_affairs/americans-quite-tolerant-of-activist-judges-1348]

10/6 **No Class** (Flyback #2)

10/13 **Why People Obey the Law: Compliance and Institutional Legitimacy**

Gibson, James L., and Gregory A. Caldeira. 2009. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton, NJ: Princeton University Press. Chapters 1, 3.

Tyler, Tom R. 2006. "Psychological Perspectives on Legitimacy and Legitimation." *Annual Review of Psychology* 57:375-400.

Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33: (#4, October): 535-556. Reprinted as Appendix C in Gibson and Caldeira 2009.

Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2005. "Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment." *Political Research Quarterly* 58 (#2, June): 187-201.

Macaulay, Freidman, and Mertz: Pp. 367-401; 466-486.

10/20 **Courts and Public Opinion: Causes and Consequences**

Huber, Gregory A., and Sanford G. Gordon. 2004. "Accountability and Coercion: Is Justice Blind when It Runs for Office?" *American Journal of Political Science* 48 (#2, April): 247-263.

Brace, Paul, and Brent D. Boyea. 2008. "State Public Opinion, the Death Penalty, and the Practice of Electing Judges." *American Journal of Political Science* 52 (#2, April): 360-372.

Gibson, James L., and Gregory A. Caldeira. 2009. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton, NJ: Princeton University Press. Chapters 2, 4, 5.

Stoutenborough, James W., Donald P. Haider-Markel, and Mahalley D. Allen. 2006. "Reassessing the Impact of Supreme Court Decisions on Public Opinion: Gay Civil Rights Cases." *Political Research Quarterly* 59 (#3, September): 419-433.

Myers, William, and Reginald S. Sheehan. 2009. "The Australian High Court and Attitudes Toward Aborigines: A Test of Court Influence on Australian Public Opinion." Paper delivered at the 2009 Annual Meeting of the American Political Science Association, September 3 – 6, Toronto, Canada.

Macaulay, Freidman, and Mertz: Pp.143-144; 186-213.

10/27 **Judicial Campaigns and Elections**

Bonneau, Chris W., and Melinda Gann Hall. 2009. *In Defense of Judicial Elections*. New York: Routledge.

Benesh, Sara C. 2006. "Understanding Public Confidence in American Courts." *The Journal of Politics* 68 (#3, August): 697-707.

Gibson, James L. 2009. "'New-Style' Judicial Campaigns and the Legitimacy of State High Courts." *The Journal of Politics* 71 (#4, October): forthcoming.

Gibson, James L., and Gregory A. Caldeira. 2009. "Campaign Support, Conflicts of Interest, and Judicial Impartiality: Can the Legitimacy of Courts Be Rescued by Recusals?" Paper delivered at the Chicago Area Political and Social Behavior Workshop, May 8, 2009, Northwestern University.

Gibson, James L. 2009. "Judging the Politics of Judging: Are Politicians in Robes Inevitably Illegitimate?" Paper presented at the "What's Law Got To Do With It?" conference, Indiana University School of Law – Bloomington, March 27-29, 2009.

Gibson, James L., Jeffrey A. Gottfried, Michael X. Delli Carpini, and Kathleen Hall Jamieson. 2008. "The Effects of Judicial Campaign Activity on the Legitimacy of Courts: A Survey-Based Experiment, Pennsylvania, 2007." Paper delivered at the 2008 State Politics and Policy Conference, May 30-31, 2008, Temple University, Philadelphia, PA.

11/3 **Issues in Civil Justice**

Haltom, William, and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago: University of Chicago Press.

Macaulay, Freidman, and Mertz: Pp. 246-251.

Hans, Valerie P. 2008. "Jury Systems around the World." *Annual Review of Law and Social Science* 4: 9.1-9.23.

Rose, Mary R., Christopher Ellison, and Shari Seidman Diamond. 2008. "Preferences for Juries Over Judges Across Racial and Ethnic Groups." *Social Science Quarterly* 89 (#2, June): 372-391.

11/10 **The Cultural Context of Law: Legal Cultures**

Gibson, James L., and Gregory A. Caldeira. 1996. "The Legal Cultures of Europe." *Law and Society Review* 30 (#1, April): 55-85.

Linz, Daniel, Edward Donnerstein, Kenneth C. Land, Patricia L. McCall, Joseph Scott, Bradley J. Shafer, Lee J. Klein, and Larry Lance. 1991. "Estimating Community Standards: The Use of Social Science Evidence in an Obscenity Prosecution." *Public Opinion Quarterly* 55 (#1, Spring): 80-112.

Gibson, James L. 2007. "Changes in American Veneration for the Rule of Law." *DePaul Law Review* 56 (#2, Winter): 593-614.

Macaulay, Freidman, and Mertz: Pp.251-270; 287-313; 327-365.

11/17 **The Legal Profession**

Kay, Fiona, and Elizabeth Gorman. 2008. "Women in the Legal Profession." *Annual Review of Law and Social Science* 4: 299-332.

Macaulay, Freidman, and Mertz: Pp. 789-947.

Scherer, Nancy, and Banks Miller. 2009. "The Federalist Society's Influence on the Federal Judiciary." *Political Research Quarterly* 62 (#2, June): 366-378.

Daniels, Stephen, and Joanne Martin. 2006/2007. "Texas Plaintiffs' Practice in the Age of Tort Reform: Survival of the Fittest – It's Even More True Now." *New York Law School Law Review* 51: 285-320.

11/24 **No Class – Thanksgiving**

12/1 **The Impact of Courts on Society**

Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change? **Second Edition*** Chicago: University of Chicago Press.

Stryker, Robin. 2007. "Half Empty, Half Full, or Neither: Law, Inequality, and Social Change in Capitalist Democracies." *Annual Review of Law and Social Science* 3: 69-97.

12/14 **Term Paper Due**