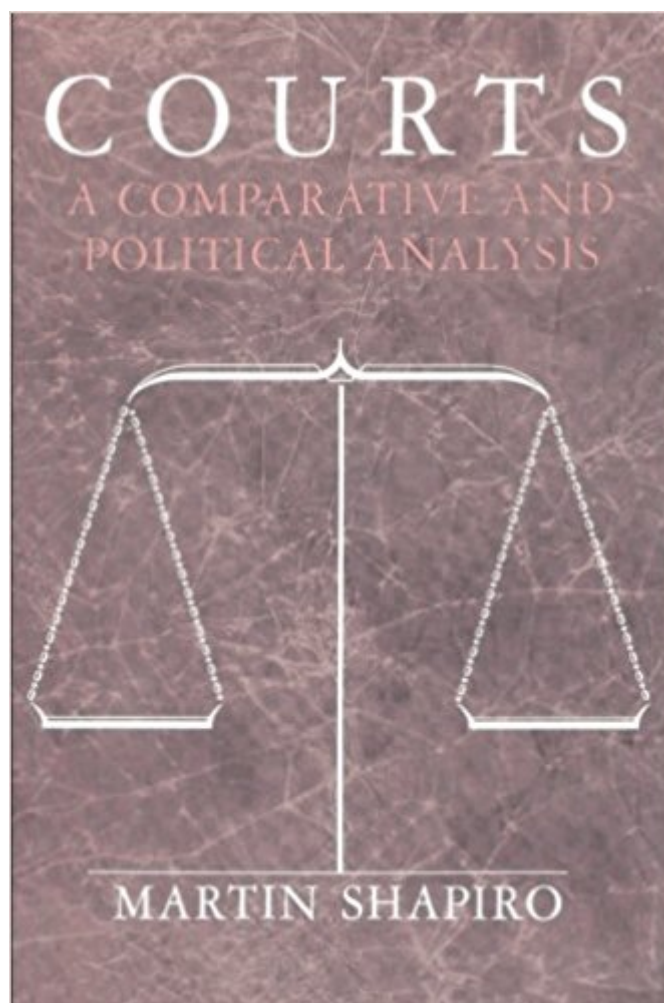


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# Courts: A Comparative And Political Analysis



## Synopsis

In this provocative work, Martin Shapiro proposes an original model for the study of courts, one that emphasizes the different modes of decision making and the multiple political roles that characterize the functioning of courts in different political systems.

## Book Information

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## Customer Reviews

In this provocative work, Martin Shapiro proposes an original model for the study of courts, one that emphasizes the different modes of decision making and the multiple political roles that characterize the functioning of courts in different political systems.

I purchased this book for a class, and the rating has not so much to do with the content of the book as it does with the Kindle's formatting. Unlike other books, the kindle reader will tell you the actual page number - which is a lifesaver for students who need to reference passages for papers, exams, etc. Seriously, and press-to-Kindle converters, keep this up! However, there are a few odd grammatical errors or typos in the text which make it hard to read on a laptop or kindle. The cause for complaint might be rooted in tendencies, for me, to be hyper-critical of such errors on screens (due to habituated tasks like emails). However, it still has been a bit odd. I found over three errors within the first chapter alone, and it's just a bit off-putting. Again, I don't think that this is the case for the paperback edition; I am pointing this out and writing a review because I had to, very quickly, read the first few chapters for a university course and the physical copy was back-ordered at the time. Example: "Doctrines like judicial notice have allowed either one of the parties or the judge

himself to assume widely known social facts without proving them. Shapiro, Martin (2013-11-15). *Courts: A Comparative and Political Analysis* (p. 44). University of Chicago Press. Kindle Edition "Even putting that quote into Microsoft Word shows that "know" should be "known."

Martin Shapiro's *Courts: A Comparative and Political Analysis* is one of those special books that changes the way scholars view a particular subject. Typically, political scientists and lawyers have considered courts independent, apolitical institutions that apply predetermined legal rules in a rational manner. Shapiro turns this narrative upside-down. He shows that courts are in fact political actors that respond to political incentives. He begins *Courts* by discussing the conventional prototype of courts. He shows that some element of consent is required for legitimate dispute resolution. In tribal societies, this was resolved by direct consent obtained by the "big man" adjudicator from each of the parties. Losing parties would abide by the decision because they had agreed in advance and because they are part of the same social fabric. In modern societies, when parties might come from different parts of country - or even across the world - it becomes more difficult to compel them to accept an adjudicator's judgment. Governments had to increase the power of judges to compel losing parties to appear at trial and obey judgments. However, in order to compensate for this lack of consent, Shapiro argues governments were forced to grant judges some element of independence. Fairness and justice compensate the parties for their lack of consent and therefore losing parties generally at least grudgingly comply. In particular, Shapiro focuses on disproving four common misperceptions about courts. First, he claims that all courts have limits on their independence and that no judge is truly separate from politics. In order to demonstrate this, he discusses the English judicial system, widely regarded as one of the more independent. In fact, Shapiro shows how English courts have been subordinated first to the King, and then to Parliament. While Parliament seldom interferes in the daily administration of justice, it does pass broad laws limiting the discretion of judges and preventing them from reviewing administrative acts. Increasingly, judges can no longer "create" the common law, as had been the norm in the 18th century, but rather must apply parliamentary decrees. In fact, (at least when Shapiro was writing) there had been extremely few cases in which judges challenged administrative agencies on any politically sensitive matters. Next, he questions the concept of judges passively applying predetermined legal rules. Here, he discusses the European civil law systems, particularly France, in which judges are presumed to simply apply the text of the legal code. Here he shows that even civil law judges must fill in gaps and interpret ambiguities within the supposedly comprehensive code in order to resolve individual cases. For example, French judges had routinely employed

"creative interpretations" of the personal injury provisions in the code in order to reduce burden of proof on plaintiffs in automobile accidents. Some of their legal gymnastics would have made a common law lawyer blush. Civil law lawyers and judges might not refer to "jurisprudence" as the source of law, but in reality jurisprudence forms the basis for interpreting the code for specific factual situations. Courts then look at imperial China as a system that is commonly regarded as based on mediation rather than litigation. Many scholars of Chinese law claim that Chinese citizens are averse to litigation and prefer mediated settlements. Again, Shapiro shows how this stereotype neglects important institutional and cultural developments, such as the comprehensive Chinese penal code. Indeed, he argues that all legal systems combine elements of mediation and judging. Mediation at the lower levels in China was undertaken with the threat of litigation in the background. In official litigation, the magistrate could impose severe penalties even for petty crimes. This usually convinced parties to settle their claims and find a solution so as to avoid the harshness of the state. Neither party wanted to risk severe punishment in most cases. Rather than a cultural norm against litigation, Shapiro shows that this system was the result of strategic political design. Pushing most cases toward mediation provided the imperial bureaucracy with a cost-effective mechanism to handle disputes and minimize the number of officials on the imperial payroll. Finally, Shapiro argues that some system of judicial appeal is crucial so that political elites can monitor adjudication and provide a chance to correct errors. Here, he looks at the Islamic legal system, which has often been portrayed as "kadi justice" dispensed only at the first instance level. Unlike the other great families of law, Islamic law is not unified and does not have a strict legal hierarchy. There is no Muslim pope and different philosophical schools issued competing interpretations of shari'ah. As such, there was little demand for appeals within Islamic law. Litigants could simply retry their case before a different judge (from a different school) - the ultimate in forum shopping. By contrast, appeals mechanisms have arisen in the Islamic world when the secular state has established an adjudication system (often to avoid the heavy burden of proof under shari'ah). Courts is a great introduction to comparative courts as it covers the four main legal systems. However, Shapiro's narrative probably shouldn't be taken as the final word on the history of any of these legal systems. Shapiro's goal is to argue that courts are political actors and the implications of that argument. This book is designed to dismiss stereotypes and generate new theories. Indeed, it seems like every page contains a pearl of wisdom - or a great idea for a dissertation thesis. Courts is a must for anybody interested in courts or the rule of law. It's a tough read, but well worth it.

Kelly needs it , great, This is a well made, very sharp product at a great price point. I'd definitely

recommend it and would buy other products from the seller. Another nice touch is that the seller contacted me to ask if I was satisfied. I am. feel very good . nice, feel good.

Martin Shapiro's book, *Courts: A Comparative and Political Analysis* does a good job explaining the basis and theory behind courts by examining the traditional prototype of courts and evaluating and complicating it. Though Shapiro is a law professor discussing legal history and abstract concepts, he succeeds in structuring the book in a matter that makes it a difficult, but manageable read. Shapiro starts with the basic prototype of courts, and proclaims that this prototype does not truly fit any court system. He shows how courts developed from a basic triadic system of conflict resolution and then through the various chapters goes about showing the non-universal aspect of the prototype by examining a different, often historical, example of a clear violation of a point of the prototype. Shapiro shows how these variations develop and hence shows the complexity of what we think of as courts. A reader can take a lot away from this book beyond the basic argument. Shapiro shows complex ideas of legal history, for example, in the second chapter he explains much of the development of common law in England. This is interesting beyond the argument of the book and something that is often interesting and engaging. Though this book is full of often interesting history and theory, it is not necessarily full of that much practical information. Though one can learn about the basic concept of courts, they can not take that information out into the real world, even if the reader deals with the courts and legal system. It is a good academic exercise and a good theoretic explanation. I read this book for an undergraduate college course and it was good there, but not something one should read on one's own to take something independent away from it. Shapiro is a law professor and has a lot of complicated flexible ideas. That can make reading the book an occasional struggle to make it through the sometimes dull intricacy. Fortunately, Shapiro makes that easier for the reader by being a master of organization. There is never much of a question of where Shapiro is going and his main points are always summarized in the introduction and conclusion of each chapter. Though Shapiro sends the reader on a complicated and sometimes slow journey, he doesn't send her or him without a map. I recommend this book strongly in an academic setting. It is a helpful and honest analysis of the nature of courts that engages in explaining and exploring their complexity.

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