Law, the Separation of Powers, and the Supreme Court
Political Science 401
Selected Topics in Political Science:
Spring 2012
TR 9:55-10:45AM
1131 Mosse Humanities Building

Professor Information:

Professor Ryan Owens
406 North Hall
1050 Bascom Mall
Madison, WI 53706
rjowens@wisc.edu
Office Hours: Tuesdays 11-12 or by appt.

Teaching Assistant:

Kristen Fox
121 North Hall
keason@wisc.edu
Office Hours: Tuesdays and Wednesdays 1:15-2:15

Class Description: The goal of this class is to teach you how the Supreme Court interacts with political institutions. We will examine various concepts such as the appointment process, jurisdiction, statutory interpretation, legislative and executive power, and strategic decision making. We will analyze the role of Congress and the executive in each of these and other topics. Our readings will be a mix of social science research and Supreme Court opinions. At the end of the class, you will understand how the Court makes decisions in an interdependent environment, as well as how other political actors influence the choices justices make.

Requirements and Grades

Readings. Each week, I will assign a number of required readings. Unless otherwise noted, all articles will be available on the course website. In addition, there are three required books for the class. These books may be purchased through the bookstore and most online booksellers (Amazon.com; Half.com; Powells.com). The book on the Solicitor General will not become available until April.


I do not include readings that are heavy empirical in nature, though there are quantitative methods throughout many of them. It is my goal for you to learn concepts in this course, not mathematical modeling. In that vein, I do not expect you to understand or discuss the statistical methods used in the readings. Rather, I want you to understand the theory, research approach, and
results from each reading. That is, think critically about what question the authors ask, how they measure the concepts they examine, and whether they could use alternative approaches to find answers to their questions.

**Grading.** I will base your grade on two midterm exams, class attendance, and a final exam. The midterm exams will both be held in class. **Each** counts for 25% of your overall grade and will include only the material leading up to that exam. (That is, the second midterm will only include material between the first and second exams.) The final exam counts for 40% of your grade and is cumulative. Class attendance counts for 10% of your grade.

**Exams.** We will have three exams in this class. The first two exams will make sure you follow along with the readings and stay focused. The first exam will cover material from the first day of class to the last full lecture before the test. The second midterm covers the material between the first midterm and the second midterm. The final will be cumulative. These exams will be a mix of multiple choice questions, short answers, and essays.

**Class Attendance/Participation.** I expect you to come to class and to be prepared, which means you read the material assigned for class and can discuss it. I interact with my classes and expect students to be present and able to talk about the reading material for the day’s class. Unprepared classes are boring to teach and even more boring to sit through. So please come prepared.

Additionally, at the end of five classes (chosen randomly by me), I will hand out index cards to all those attending class. On them, you will write your name and a brief question from the topic of the day’s lecture. More specifically, you will write a question that remains unanswered in your mind or is otherwise unclear regarding the class topic. I will review these cards to determine what topics require follow up on my part. If you are in class each time I circulate index cards you will get full credit for attendance. If you are in class none of those times, you will get a 0 for attendance.

**Grade Scale.** The grade scale is as follows:

- 93-100 (A)
- 88-92 (AB)
- 83-87 (B)
- 78-82 (BC)
- 70-77 (C)
- 60-69 (D)
- < 60 (Fail)

**Class Behavior.** We all want to learn while in class, so do not speak out of turn or otherwise cause disruptions in class. Be respectful to your fellow students. If you fail to do so, university guidelines require me to take action. For more information, please see http://www.students.wisc.edu/rights/. Bottom line, I want you to talk in class—but not while I'm talking.

**Laptops.** I will not allow laptops this semester in class. They have become distracting to other students and entice you to read non-class related material during lecture.
**Academic Integrity.** All students are held to the university's academic integrity standards. For more information on those, please see: http://students.wisc.edu/saja/integrity.html.

**Students Requiring Need-Based Accommodations.** Students who are requesting any accommodations on the basis of disability should schedule an office appointment with me within the first three weeks of the semester. Please schedule this office appointment by email. To maintain the confidentiality of your request, please do not approach me before or after class to discuss your accommodation needs. The McBurney Disability Resource Center (263-2741) provides resources for students with disabilities (http://www.mcburney.wisc.edu/). You will need to provide documentation of disability to them in order to receive official university services and accommodations. Do not wait to contact me about this matter, as I will be unable to assist you after the original time period.

**Schedule**

**WEEK 1**

I. **INTRODUCTION TO THE SUPREME COURT AND THE SEPARATION OF POWERS**

January 24: Introduction.

January 26: Initial impressions about the Court.

Discussion: No discussion sections week 1.

**WEEK 2**

II. **JUDICIAL AUTHORITY**

January 31: How the Court operates.

February 2: Justiciability and Standing
- *Fruttingham v. Mellon* (1923)
- *Flast v. Cohen* (1968)

WEEK 3

February 7: Judicial Review, National Supremacy, and Judicial Supremacy
- Marbury v. Madison (1803)
- Cooper v. Aaron (1958)

February 9: Judicial Review (Cont’d)

Discussion: Martin v. Hunter's Lessee (1816), Cohens v. V.A (1821).

WEEK 4

III. MEMBERSHIP IN THE BRANCHES

February 14: Supreme Court Nomination and Confirmation: The President

February 16: Supreme Court Nomination and Confirmation: The Senate


WEEK 5

February 21: Supreme Court Nomination and Confirmation: Senate Judiciary Committee Hearings
- Hearing testimony in class.

February 23: In-Class Review
Discussion: Review for exam.

WEEK 6

February 28: EXAM

March 1: Membership in Congress
  • Powell v. McCormack (1969)


WEEK 7

IV. STATUTORY AND CONSTITUTIONAL INTERPRETATION

March 6: Textualism

March 8: Legislative Intent


WEEK 8

March 13: Strategic Statutory Construction
  • Cross, Frank. 2009. *The Theory and Practice of Statutory Interpretation.* Stanford University Press. Ch. 6

March 15: Presidential Signing Statements

V. LEGISLATIVE POWERS

March 20: Jurisdiction Over Federal Courts
- *Ex Parte McCardle* (1868)

March 22: Modern Commerce Clause Cases
- *Wickard v. Filburn* (1942)
- *Gonzales v. Raich* (2005)

Discussion: Petitioner and Respondent Briefs (minimum coverage issue) in *Florida et al. v. Department of Health and Human Services.*

WEEK 10

March 27: Review

March 29: EXAM

WEEK 11: No Class; Spring Break

WEEK 12

April 10: The Separation of Powers and Agenda Setting on the Court

April 12: Strategic SOP Voting and Congressional Overrides

VI. WAR POWERS

WEEK 13

April 17: War Powers:
- Korematsu v. United States (1944)
- Ex Parte Milligan (1866)

VII. DOMESTIC PRESIDENTIAL POWERS

April 19: Faithful Execution and Line Item Veto

Discussion: United States v. Curtiss-Wright Export Corp (1936); Mora v. McNamara (1967) (Power to commit troops).

WEEK 14

April 24: Presidential Control of the Administration
- Myers v. United States (1926)
- Humphrey's Executor v. United States (1935)

April 26: Presidential Control of Information: Executive Privilege


WEEK 15

April 24: Executive Implementation

VIII. THE UNITED STATES SOLICITOR GENERAL
May 3: The United States Solicitor General: Creation and Theories of Success

Discussion: Review for exam.

**WEEK 16**

May 8: The United States Solicitor General: Evidence of Influence

May 10: In-Class Review

Discussion: No discussion sections Week 16.

Final Exam: May 17, 5:05 PM – 7:05 PM