The Supreme Court & American Politics

Political Science 401
Selected Topics in Political Science:
The Supreme Court as a Political Institution
Fall 2012

Social Science 5106
4:00 - 5:15 MW

Professor Information

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Class Description

Why does the United States Supreme Court change law? Do elected politicians (such as members of Congress) influence how the Court decides cases? How do norms and institutions influence the choices justices make? The principal purpose of this course is to answer these types of questions. Unlike constitutional law classes, this course does not focus on legal doctrine; rather, it examines political and institutional aspects of the Supreme Court. We will use social science to analyze theories of judicial decision making and learn how law is made in a political context. We will examine a host of archival (i.e., private) Supreme Court records and other data. Students will come away from this class with an appreciation of how justices on the Court operate in an interdependent environment in which their actions turn on their preferences, the preferences of their colleagues, institutional norms, and political context. That is, students will observe that the Court is not simply a legal body that “finds” law, but one that also is inherently political and “makes” law.

In that vein, this is not a normative class. Only occasionally will we discuss whether we “agree” with a Court decision, or whether it is normatively appropriate for nine unelected actors to make significant policy decisions. Instead, our focus is on the observable data. What does the Court do. How does it operate. In short, we examine what is, not what should be. So leave your politics at the door when you come in.
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 two required books for the class. These books may be purchased through the bookstore and most online booksellers (Amazon.com; Half.com; Powells.com . . .):


I do not include readings that are heavily empirical in nature, though there are quantitative methods throughout most 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 participation, a final exam, and your research question memo. 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. (The second midterm will only include material between the first and second exams.) The final exam counts for 35% of your grade and is cumulative. Class participation counts for 10% of your grade, and the memo counts for 5%.

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 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 (two to three sentence) summary of the topic we discussed that day—that was the research question we examined (e.g., does Congress influence judicial outcomes?) and the findings (e.g., yes but only when conditions A and B are met). On the other side of the card, you will write one question on the topic that remains unanswered in your mind or is otherwise unclear (e.g., . . . does congressional influence matter more or less depending on the stage of the justice’s career?). I will review these cards to determine who is attending class, whether you understand the material, and what topics require follow up on my part.

Research Question Memo. At the beginning of class on December 12, you must turn in a one page memo (maximum) to the TA. I want the memo to be a simple research question. That is, come up with a research question that we did not examine in class. Under what conditions does the Court do X? In what context will a justice do Y? After you raise the question, provide a few sentences as to how you would answer the question as a social scientist. My goal here is not to have you conduct extensive research. Rather, I want you to show me that you can think about the Court as a social scientist, raise an interesting research question, and give some thought as to how you might analyze the question if you had your way. This memo should be no more than a full page, and likely around a half page.
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)—Don’t do this...

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 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.

Schedule

I. The Basics of the Judicial Game.

September 5: Introduction; Hand out syllabi.

September 10: Initial Impressions About The Court.
• What do we know about the modern Court?
• What is to be celebrated and what is to be criticized about the Court?

September 12, 17: Models of Judicial Decision Making.
• How is the Supreme Court decision making process like a game?
• How is the Court both a legal and policymaking actor?
• How does the strategic model differ from the attitudinal and legal models of decision making?
September 19: The Operation of the Court: Nuts and Bolts.

- What are the different theories of Supreme Court decision making?
- How does empirical analysis shed light on conventional theories of judicial behavior?

II. Judicial Selection and Exit.

September 24: Nominations and Confirmations: The President.

- How does uncertainty impact the president’s nomination selection and the Senate’s confirmation decision?
  1. Strategic Selection: Presidential Selection of Supreme Court Justices from Hoover through Bush.

September 26: Nominations and Confirmations: The Senate.

- How does Senate composition influence the president’s choice of a nominee?
- What factors make it more likely that the Senate will confirm a nominee?

October 1: Nominations and Confirmations: The Senate.

- What other features besides ideology influence Senate confirmation?

IV. Getting To the Court.

October 3: Agenda-Setting on the Supreme Court.

- How does discretionary review make the Court more or less powerful?
- What factors make it more (less) likely that the Court will review a case?

V. The Collegial Game.

October 8: Strategic Behavior: the Chief Justice.

- What role does ideology play in the opinion assignment process? Does context matter?
What institutional tools does the Chief possess that allows him to influence the opinion writing process?


October 10: Review and Prepare for Exam.

October 15: Exam.

October 17: Strategic Behavior: Responses to the Draft Circulation, Accommodation, and Opinion Coalitions.

- What role does ideology play in the opinion assignment process? Does context matter?
- What institutional tools do associate justices possess that allow them to influence the opinion writing process?


- How might Congress and the president influence the choices justices make?
- Why would justices care what the other branches of government desire in a case?

October 24: The Politics of Precedent: Law as a Dependent Variable.

- How does law influence the choices justice make? Is it a constraining influence at all?

October 29: The Politics of Precedent, Cont’d.

- How might we test the impact of law on justices’ votes?

VI. Players in the Judicial Game.

October 31: The Court’s Opinions.

- Under what conditions do justices write clear or complex opinions?
- Do justices write different opinions for different audiences?
  1. TBD

November 5: The Role and Influence of Lawyers
• Which lawyers are more successful before the Court? Why?
• What role do oral arguments play on the Court?
• Do justices use oral argument for legal or strategic purposes?

November 7: Review.

November 12: Exam

November 14: The Solicitor General.
• How does the Solicitor General relate to the Supreme Court?
• Does the Solicitor General influence the choices justices make?
  1. Black and Owens, Chapters 1,2,3,5,7.

November 19: Organized Interests and Their Roles.
• What role do interests groups play in the justices’ attainment of their goals?
• How do interest groups lower uncertainty?
• What factors leads organized interests to file a brief?
• Are amicus briefs influential?

November 21: TBD.

November 26: The Public.
• How does the public opinion influence the Court?

November 28: Impact of Court Opinions.
• What effect, if any, do Court decisions have on opinion?
December 3: Law Clerks.

- What role do law clerks play in the modern Supreme Court?

December 5: Judicial Hierarchy.

- How does the Supreme Court interact with lower federal courts and federal agencies?

December 10: Looking Back.

- Knowing what you know about the Court, what kind of changes might you make to it?
- How did your initial impressions about the Court change after our readings?

December 12: Review.

December 17: Final Exam 7:25-9:25 PM