The Supreme Court as a Political Institution

Political Science 401
Selected Topics in Political Science
Fall 2013

Van Vleck B231
4:00 - 5:15 MW

Professor Information

Professor Ryan Owens
214 North Hall
1050 Bascom Mall
Madison, WI 53706
rjowens@wisc.edu
Office Hrs: W 9:0-11:00 or by appt.

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. 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.

I have two goals for students. First, I want you to understand how the Supreme Court works. More specifically, I want you to leave 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. Second, I want you to learn how to think like a social scientist. For each reading, I want you to question the underlying assumptions of the authors’ theories and whether they actually find what they think they do. Think about the show Mythbusters—are the authors’ assertions confirmed, plausible, or busted?

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 both will be held in class. The first one counts for 25% of your overall grade and will include only the material leading up to that exam. The second midterm counts for 30% of your grade and will include material only 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. These exams will be a mix of multiple choice questions, short answers, essays, and hypotheticals.

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.

At the end of five classes (chosen randomly by me), I will hand out index cards to all those attending class. You will write your name and a brief question on the topic we discussed in class that remains unanswered in your mind (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.

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/](http://www.students.wisc.edu/rights/).

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. If you have a documented medical condition that requires use of a laptop, I will obviously waive this rule.

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](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/](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 4:** Introduction; Hand out syllabi.

**September 9:** 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 11:** 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?


**September 16, 18:** 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?


2. Epstein and Knight. Chapter 1-2.

**September 23:** Nominations and Confirmations: The President.

- How does uncertainty impact the president’s nomination selection and the Senate’s confirmation decision?


**September 25:** 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?


**September 30:** Nominations and Confirmations: The Senate.

- What other features besides ideology influence Senate confirmation?


**October 2:** 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?


**October 7:** Review and Prepare for Exam.

**October 9:** Exam.

**October 14:** 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 16:** 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 23: 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 28: The Politics of Precedent, Cont’d.

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

October 30: Oral Argument and the Role 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 4: 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 6: Law Clerks

- What role do law clerks play in the modern Supreme Court?
November 11: Review

November 13: Exam

November 18: Organized Interests
  • What role do interest groups play in the justices’ attainment of their goals?
  • How do interest groups lower uncertainty?
  • What factors lead organized interests to file a brief?
  • Are amicus briefs influential?

November 20: The Public.
  • How does the public opinion influence the Court?

November 25: The Supreme Court and the Media
  • How can the Court influence the media?
  • How accurately does the media portray the Court?
    1. Davis, Ch. 1-2
    2. Slotnick and Segal, Ch. 6

November 27: The Supreme Court and the States.
  • How might state characteristics influence the Court?
    1. Readings TBA

December 2: Legitimacy and the Impact of Court Opinions.
  • What effect, if any, do Court decisions have on opinion?

December 4: Judicial Hierarchy and Lower Court Compliance
  • How does the Supreme Court interact with lower federal courts and federal agencies?

**December 9: 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 11: Review.**

**December 20: Final Exam 7:25-9:25 PM**

- Location TBD