The Supreme Court as a Political Institution

Political Science 414
Fall 2016

Birge B302
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 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 (though we do examine it in part); 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.

I have two goals for students. First, I want you to understand how the Supreme Court operates. More specifically, I want you to understand how justices behave 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.

Requirements and Grades

Readings. I have assigned a number of readings. Unless otherwise noted, all articles will be available on the course website. In addition, there are three required books for the class. You can purchase these books at the bookstore or most online booksellers (Amazon.com; Half.com...). Used versions are fine:


I do not include readings that are heavily statistical in nature (though there are quantitative methods in some 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 design, and results from each reading. That is, think critically about what question the authors ask, how they analyze the concepts, 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, and a final exam. The midterm exams both will be held during class. The first midterm counts for 25% of your overall grade and will include only the material leading up to that exam. The second midterm counts for 25% of your grade and will include material only between the first and second exams. The final exam counts for 40% 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.

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 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 six classes or discussions (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. 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. Of course, if you have a valid reason for missing class, please let me know. I am reasonable.

Class Behavior. We all want to learn while in class, so do not speak out of turn or otherwise cause disruptions in class. Respect fellow students. If you fail to do so, university guidelines require me to take action. For more information, please see [https://pubs.wisc.edu/ug/geninfo_rules.htm](https://pubs.wisc.edu/ug/geninfo_rules.htm).

Laptops. I do not allow laptops in class. They are distracting to other students and entice you to read non-class related material during lecture. (Plus, it turns out students actually perform better without laptops.) If, however, you have a documented medical condition that requires use of a laptop, I will obviously waive this rule for you.

Academic Integrity. All students must follow the university’s academic integrity standards. For more on those, please see [https://www.students.wisc.edu/doso/academic-integrity/](https://www.students.wisc.edu/doso/academic-integrity/)
Students Requiring Need-Based Accommodations. Students who require accommodations on the basis of disability should inform me via email within the first two weeks of the semester. I need to coordinate your exams and find accommodations, and the longer you wait to let me know, the harder it is for me to meet your needs. 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.

Week One
(no discussion sections)

**September 7:** Introduction; Hand out syllabi.

Week Two

**September 12:** 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?

  - This is a very long paper. Just get the main points of their proposal and, more importantly, the rationale for it.

**September 14:** The Operation of the Court: Nuts and Bolts.

- What is jurisdiction? Justiciability? Standing?
- What is the structure of the court system?
- How does a case proceed to and through the High Court?


Discussion Reading:


Week Three

**September 19, 21:** Models of Judicial Decision Making.

- How is the Court both a legal and policymaking institution?
- How does the strategic model differ from the attitudinal and legal models of decision making?

2. Epstein and Knight, Chapter 2.

**Discussion Reading:**


**Week Four**

**September 26: Nominations and Confirmations: The President.**

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

**September 28: Nominations and Confirmations: The Senate.**

- What factors make it more likely that the Senate will confirm a nominee?
  
  1. New Directions, Ch. 2.
  

**Discussion Reading:**


**Week Five**

(no discussion sections)

**October 3:** Review and Prepare for Exam.

**October 5:** Exam.

**Week Six**

**October 10:** Confirmation Hearings.

- We will listen to confirmation testimony. Apply what you have learned to what you hear.


**October 12:** 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?

  1. New Directions, Ch. 8.

**Discussion Reading:**

**Week Seven**

**October 17:** Strategic Behavior and Opinion Assignment: the Chief Justice.

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


**October 19:** Strategic Behavior and Opinion Writing.

- What institutional tools do justices possess that allow them to influence the opinion writing process?


**Discussion Reading:**


**Week Eight**

**October 24:** The Separation of Powers Game: The Political Environment.

- 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 26:** The Politics of Precedent.

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


**Discussion Reading:**


**Week Nine**

**October 31:** The Politics of Precedent, Cont’d.

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


- This is a complex paper. We will discuss it in class

November 2: 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?


Discussion Reading:

Week Ten

November 7: Oral Argument and the Role of Lawyers, Cont’d.

- We will listen to oral arguments in this class period to apply what you have learned.

November 9: Review

Discussion Reading:

Week Eleven
(no discussion sections)

November 14: Exam

November 16: 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 3-5.

Week Twelve

November 21: Law Clerks

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


November 23: The Supreme Court and the States.

- How might state characteristics influence the Court?

1. Readings TBA
**Discussion Reading:**

1. Black and Owens, Chapter 7.

**Week Thirteen**

**November 28: Organized Interests**

- 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?

2. New Directions, chapter 12.

**November 30: 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

**Discussion Reading:**


**Week Fourteen**

**December 5: The Public.**

- How does the public opinion influence the Court?

3. Black, Owens, Wedeking, and Wohlfarth, Ch. 7.

**December 7: Legitimacy and the Impact of Court Opinions.**

- What effect, if any, do Court decisions have on opinion?


**Discussion Reading:**

Week Fifteen
(no discussion sections)

December 12: Compliance with Supreme Court Opinions

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


  2. Black, Owens, Wedeking, and Wohlfarth, Ch. 8.

December 14: Review.

December 21: Final Exam 7:25-9:25 PM. Location: TBA