

POL S 462
The Supreme Court in American Politics
Winter 2011

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Office Hours: Tuesday 4:30-5:30 and by appt.
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DEN 312
T/Th 2:30-4:20

Why do the unelected justices on the Supreme Court seem to make so much public policy in the United States? How did the Supreme Court become the authoritative interpreter of the Constitution for American society? Why do actors in other branches (and ordinary citizens) allow the Court to play such an important role in American politics? How do Supreme Court justices interpret the Constitution? Can the Court protect the rights of minorities in the face of majority opposition? How can students and other observers develop an accurate understanding of the Court? These are some of the important questions addressed in this course.

The course has five parts. The first part is a case study of a single Supreme Court case that introduces the major themes of the Course. Part Two looks at the structure of the court system and the processes that bring issues before the Supreme Court. Part Three looks at how judges decide cases and whether judges' choices and decisions are (or should be) influenced by political factors. Part Four looks at some historical episodes in order to illustrate the role of the court in constitutional development and change. Part Five looks at how the Supreme Court interacts with other political institutions.

In addition to looking substantively at the Supreme Court, the course will also focus on questions about research methodology. Through readings and other assignments, students will be encouraged to think about how scholars learn things about the Court, develop evidence to support theoretical and empirical claims about the Court, and present their findings to other scholars and broader audiences. The course thus tries to inform students about the process of academic research, and aims to make students into more discriminating consumers of political information.

READINGS

The assigned textbook for the course is: Lawrence Baum, *The Supreme Court, 10th Edition*.

Most of the readings for the course are not in the textbook. Many are available on the internet to registered UW students through the UW library website. You will need to find and print those readings in order to read them. They are indicated on the syllabus as **WWW**. Some other readings are in a coursepack of photocopied material that will be available later in the quarter at Ram's Copy Center, 4144 University Way N.E. (206) 632-6650. The coursepack readings are indicated on the syllabus as **COURSEPACK**. Some other readings will be sent by email as .pdf files before the relevant class meeting. Those readings are indicated as **EMAIL** on the syllabus.

ASSIGNMENTS/GRADING

Grading for the course will be based on two exams, a class presentation and related short paper, and participation in class discussions.

Class Participation	12%	
Class Presentation	10%	
Short Research Paper	20%	Final Draft due March 4
Midterm Exam	25%	February 3
Final Exam	33%	March 15, 4:30-6:20

Grading for all assignments will be on a 100-point scale with 60 points the lowest passing grade. There is a chart explaining how the points between 60 and 100 correspond to the UW 4.0 grade scale at: <http://courses.washington.edu/pols462/gradesys.doc>.

Class Participation. 12%. The **participation** grade will be based on preparedness for class, attentiveness, constructive contributions to class discussion, and performance on any quizzes. You must do the readings in order to participate effectively in class. Much of the class time will be spent in a seminar format. This means that the professor's role is to facilitate discussion rather than present information through lectures. I will work to ensure that everyone participates in the discussion on a regular basis.

It is particularly important to be attentive during class presentations by other students.

There will be important announcements in class about assignments, course material, and course procedures. You are responsible for any information announced in class even if you miss class.

Please do not use a computer or phone during class time on days when you choose to come to class.

Class Presentation. 10%. Each student will do one class presentation during the term. The presentation should take about 5 minutes with a few additional minutes for questions from the class.

Your grade will reflect the overall effectiveness of your presentation. An effective presentation will follow instructions and be clear and well organized. It will also engage the audience of students, keep their attention, and generate questions or comments from the audience.

The dates for the presentations will be assigned during the first week of class. There will be two options for the type of presentation. You will choose one of the options as you sign up for the date of your presentation.

Option One: Cited Source Presentation.

For this option, you need to find, read, and present an outside academic article or book that is cited in the assigned readings for the day of your presentation. In your presentation, you should explain why the assigned author cited the source and whether the source actually says what the assigned author claims. You should then provide the class with an overview of the assigned source. Your overview should do the following things: 1) You should

say precisely what it is that the outside author is trying to accomplish. What question is the outside author trying to answer? What are the outside author's argument and conclusions? 2) You should explain the evidence that the outside author presents. 3) You should offer some analysis of whether the outside author is successful in developing and supporting his or her conclusions.

The outside source that you use has to be an academic source. If it is an article, it must be from an academic journal or law review. (These types of publications will be discussed and explained in class.) You cannot use an article from a newspaper, newsmagazine, or other non-academic source. If you use a book, it should be written by an academic, not a journalist or television personality. The source should also be something that presents an argument or tries to develop or test a theory with evidence. Do not use a database or data source. Sources that present evidence (as opposed to making a theoretical, moral, or doctrinal argument) are much better candidates for good presentations. The article or book you choose to focus on cannot be one of the assigned readings for this course.

Doing well on this assignment will depend on making a good choice about which source to present. It is a good idea to look at several cited sources before deciding which one will be a good subject for an interesting presentation. It is also a good idea to ask me in advance whether the source you are considering is likely to produce a good presentation. You should ask me ahead of time if you have any questions about the appropriateness of a source.

Option Two: Obscure Supreme Court Case Presentation.

For this option, the subject of your presentation will be one case that the Supreme Court selected for oral argument during the 2010-2011 term. Your case will be assigned by the instructor. The cases will be ones that have NOT attracted a lot of national press attention. The purpose of this assignment is to give the class a better understanding of the Supreme Court's workload than is available in standard news coverage.

To prepare for the presentation, you should look for information about the case on the Supreme Court's webpage and Lexis. If the Supreme Court has already decided the case, you should look at and report on the Court's decision. Another very good source of information will be the lower court decision that the Supreme Court is reviewing. You may also be able to find some news coverage in local news or legal news sources (through Lexis-Nexis), depending on the case. You may also be able to find information on legal blogs and other internet sources. However, be very careful that the information you find that way is accurate.

In the presentation, you should explain to the class the basic facts of the case and the legal questions that the Supreme Court is addressing. You might also want to briefly note your views on the importance and newsworthiness of the case.

Short Research Paper 20%. Your short research paper will be on a topic of your choosing related to the course. You need to develop your topic in consultation with the professor, and get approval for your topic. Once you have your topic, you will need to write a paper that reviews four academic articles or books that address your topic and that are not on the syllabus. (If you want to use a source that was the subject of your class presentation, you need to add one extra source, i.e., use five total sources.) The sources you review have to address your topic empirically, i.e., by presenting original evidence. Your paper should be about 10 pages long.

There will be additional information presented in class regarding what kinds of topics and what kinds of sources are appropriate. A handout on this assignment will be available on the course webpage after the first week of class.

As part of this assignment, you need to meet the following deadlines for communicating your intentions for the paper and getting approval for your topic and sources.

Jan 27, 2:30 PM. Submit a **topic proposal** to Professor Lovell.

Feb 21. 10 A.M. Submit an annotated **list of sources** you will use in your paper.

March 4. 4 P.M. Submit the **Final Draft of the Paper**. You must turn in a hard copy to Professor Lovell and also email a copy as an MSword or .pdf document.

Your paper must be typed, double-spaced, and carefully proofread. Careful and precise writing is essential to getting a good grade on the assignment. Points will be taken off for any spelling or grammatical errors and for problems with clarity and organization.

Exams. 25% and 33%. There will be a midterm and a final exam. The exams will test your knowledge of the assigned readings and class discussions through short answer and short essay questions. The midterm exam will be in-class and closed books/closed-notes. The format for the final will be determined and announced later in the quarter.

OTHER POLICIES

Office Hours and E-Mail. My office hours and e-mail address are listed at the top of this syllabus. I strongly encourage you to take advantage of my office hours. I am also available by appointment. The best way to reach me is always by email.

Academic Conduct. I will enforce the University of Washington's Student Conduct code, including the policy on plagiarism. The code can be found at:

<http://apps.leg.wa.gov/WAC/default.aspx?cite=478-120>

Late Paper Policy. It is very important that you complete assignments on time. If you have a health problem or other emergency that will prevent you from meeting assignment deadlines, you need to contact me as soon as possible by email to make suitable arrangements regarding the assignment. If an agreement cannot be reached ahead of time, the penalty for late papers and presentations is 10 points (on the 100 point scale) per calendar day.

Course Webpage: The webpage for the course is: <http://courses.washington.edu/pols462/>. The webpage will have information about the course and assignments and links to other information.

Disabled Students. If you would like to request accommodations due to a disability, please contact Disabled Student Services, 448 Schmitz Hall, 543-8924 (V/TDD). If you have a letter from Disabled Student Services indicating you require accommodations, please present the letter to me as soon as possible so that I can make necessary arrangements.

READINGS SCHEDULE.

Reading should be completed **before** the corresponding class meeting on the schedule.

PART ONE: Introduction to the Course and the Supreme Court.

Jan 4: Introduction to Class

Jan 6: *Screws v United States*. Instructions on how to find this reading will be given on the first day of class.

Jan 11 Reading Assignment Announced on January 6.

PART TWO: Court Procedures and Caseload.

Jan 13 **Baum** chapters 1 and 3.

Jan 18 **Baum** chapters 2 and 5.

PART THREE: Judicial Decision Making and the Counter Majoritarian Problem.

Jan 20 William H. Rehnquist, "The Notion of a Living Constitution" *Harvard Journal of Law and Public Policy* 29 401-415 (2006) **WWW**

Sanford Levinson, "On Interpretation: The Adultery Clause of the Ten Commandments" *Southern California Law Review* 58: 719-724 (1985) **WWW**

Brown v Board of Education 347 U.S. 483 (1954) **WWW**

Jan 25 **Baum** chapter 4

Jan 27 Walter Murphy, "Marshalling the Court", from *Elements of Judicial Strategy Coursepack*

Feb 1 Lee Epstein and Thomas G. Walker, "The Role of the Supreme Court in American Society: Playing the Reconstruction Game" in *Contemplating Courts* CQ Press (1995).

Mark Graber, "Legal, Strategic, or Legal Strategy" In Kahn and Kersch. *The Supreme Court and American Political Development*, University Press of Kansas, 2006. **EMAIL**

Thomas R. Keck, "Party, Policy, or Duty: Why does the Supreme Court Invalidate Federal Statutes" *American Political Science Review* 101:321-38 (2007). **WWW**

Feb 3: Midterm Exam

Feb 8: Keith Bybee, "Legal Realism, Common Courtesy, and Hypocrisy" *Law, Culture and the Humanities* I: 75-102 (2005). **WWW**

PART FOUR: The Supreme Court and Constitutional Development

Feb 10 Mark A. Graber, “The Problematic Establishment of Judicial Review” in Gillman and Clayton, *The Supreme Court and American Politics*, University Press of Kansas (1999). **Coursepack.**

Lee Epstein and Jack Knight, “On the Struggle for Judicial Supremacy” *Law and Society Review* 36:87-120 (1996). **WWW**

Feb 15 Pamela Brandwein, “A Judicial Abandonment of Blacks? Rethinking the ‘State Action’ Cases of the Waite Court” *Law and Society Review* 41:343-386 (2007) **WWW**

PART FIVE: The Place of the Court in the Political System

Feb 17 Robert Dahl, “Decision Making in a Democracy”, *Journal of Public Law* 6:279-95(1957) **WWW**

Girardeau Spann, *Race Against the Court*, chapters 7 and 9. **COURSEPACK**

Marc J. Hetherington and Joseph L. Smith, “Issue Preferences and Evaluations of the United States Supreme Court” *Public Opinion* 71_40-66 (2007). **WWW**

Feb 22 Mark A. Graber, “The Non-Majoritarian Difficulty” 7 *Studies in American Political Development* (1993). **EMAIL**

Feb 24 *Duplex Printing Press Co. v Deering* (254 U.S. 443, 1921) **WWW**

Mar 1 George I. Lovell “Killing with Kindness” from *Legislative Deferrals*, Cambridge University Press (2004). **EMAIL**

Mar 3 **Baum** chapter 6

Gerald N. Rosenberg, “Bound for Glory: Brown and the Civil Rights Revolution” from *The Hollow Hope*, University of Chicago Press (1991). **COURSEPACK**

Mar 8 Howard Gillman, “How Political Parties Use the Courts to Advance Their Agendas” *American Political Science Review* 96 : 511-524 (2002) **WWW**

Scott E. Lemieux and George I. Lovell, “Understanding the Impact and Visibility of Ideological Change on the Supreme Court.” *Studies in Law, Politics, and Society*, 44:1-33 (2008). **EMAIL**

Mar 10 Susan Burgess “Did the Supreme Court Come Out in Bush v. Gore? Queer Theory on the Performance of the Politics of Shame.” *Differences* 16: 126-46 (2005) **WWW**

Final Exam: March 15, 4:30-6:20