

PSC 316: The Supreme Court and American Politics

Hall of Languages 202
Tuesdays and Thursdays, 2:00-3:20

Instructor:

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Course Summary

It is emphatically the province and duty of the judicial department to say what the law is.
-Chief Justice John Marshall, 1803, *Marbury v. Madison*

Since Chief Justice Marshall's claim was, perhaps, the beginning of the pivotal role that the Supreme Court has played in defining the terms of constitutional government in the United States. In this course, we will approach the work of the Supreme Court from both legal and political perspectives, in order to better understand the nature and function of judicial power in the U.S. As social scientists, we aim to understand how the Supreme Court makes decisions. To this end, we will keep a keen eye to the politics on the court, but we also will look for places where the law seems paramount, and, more often than not, places in which law and politics meet. The centerpiece of the course will be the Supreme Court simulation. Each of you will be assigned to play a role on the court, and that means using legal argumentation in much the same way that the justices do. Meanwhile, we will try to be aware of the extent to which politics seeps into Supreme Court decision making. Though the course will, necessarily, make reference to decisions of the court, it is not primarily a course in constitutional law. For those who are drawn to the caselaw components of this course, I encourage you to take the two semester constitutional law course taught in this department by Professor Keck.

Learning Objectives

This course has two kinds of objectives. The first is to learn something about the Supreme Court, but the second is about the skills that you acquire as a university student. The primary substantive aim of the course is for you to learn about the political development and judicial process of the Supreme Court, as well as the political impact that the Supreme Court has on American government and society writ-large. We will attempt to break down the sharp distinction sometimes made between law and politics to better understanding the how the Supreme Court functions and its role as the major interpreter of constitutional law.

The second objective requires you to develop strong analytical and communication skills, which will be portable from this class to your other classes and beyond. To that end, assignments in this course are designed to help you to think through the problems of constitutional analysis and

judicial behavior by using the same kinds of reasoning as the justices themselves. The simulation assignment will put you in the places of justices who must balance competing concerns of legal precedent, politics, and their own ideological goals. Once you have developed your ideas, you must communicate them either through speaking or writing. Therefore, the course also contains written assignments, but also an in-class oral component as part of the simulation.

Course Readings

Textbooks are expensive, and student budgets are tight. Therefore, there will only be one required text for the course:

- Epstein, Lee and Jack Knight. 1998. *Choices Justices Make*. CQ Press. ISBN: 978-1-56802-226-0

The book is available at the SU Bookstore, and is also widely available both new and used on your favorite bookstores on the web (for as little as \$15 last time I checked). There is also one recommended text, which will can be useful background for those of you who have little previous exposure to the Supreme Court:

- Greenhouse, Linda. 2012. *The U.S. Supreme Court: A Very Short Introduction*. Oxford University Press. ISBN: 978-0199754540

The remainder of the course readings will be academic political science articles and popular newspaper and magazine articles drawn from the web. Other readings can be found on Blackboard. Refer to the course calendar, Blackboard notifications, and emails from myself and the TA for updates on the reading schedule and where to find materials.

Readings on the syllabus should be read BEFORE the class for which they are listed.

Course Requirements

Course grades will be based on a semester-long simulation assignment, one paper, and class attendance and participation, and a final exam.

This course has a heavy load of reading, writing and in-class presentations. Grades are *earned* based on the quality of work submitted, not given. You are encouraged to see me or Darci if you are unsure about the expectations for any assignment.

All grading of written work will be done anonymously. This means that written work must be submitted with a **title page on which your name appears**, and then **your name should not appear on any other page**. All written work should include page numbers. Plagiarism will not be tolerated—see Academic Integrity in Course Policies, below.

Grades will be assigned based on the following rubric:

Short paper.....	10%
Simulation Assignment	50%
Part 1	25%
Part 2	40%
Oral	20%
Overall.....	15%
Final Exam.....	30%
Attendance and Participation.....	10%

The final exam will be held on December 18th, from 8:00 AM to 10:00 AM in our regular classroom.

Course Policies

Laptops and other electronic devices: During class, your jobs are to listen actively, take careful notes, reflect on the concepts we are discussing, and participate in those discussions when you have something to say. None of these jobs requires a laptop, a tablet, or a phone, and the use of such devices during class can be quite distracting to students sitting nearby. However, since many of our readings are available electronically and having them available during class can be useful, I will *provisionally* allow laptops or tablets for note taking and accessing course readings *only*. Use of laptops or tablets for other purposes will result in laptops being forbidden for the remainder of the semester. Phones should not be used in class for any purpose.

Late paper policy: Because much of the written work for this class is connected to the simulation assignment, and because the various pieces of that assignment are closely linked with one another, it is more important than usual that students turn in all work on time. As such, deadlines will be extended only under unusual circumstances, and only with my explicit permission. Late papers will be reduced 1/3 of a grade for every 12 hours they are late.

Grading policy: All grading of written work will be done anonymously. This means that written work must be submitted with a title page on which your name appears, and then your name should not appear on any other page. If you have any questions about written assignments, either before or after they are due, you are welcome to speak with either me or Darci. Grades may be appealed in rare circumstances. To do so, you should submit a clean copy of the paper to me, along with an explanation for the reason why you think you deserve a higher grade that you received (1 page). I will then re-grade the paper from scratch. This means that you could receive a grade that is lower, higher, or the same as the grade originally assigned. Your grade will not be affected by whether your paper is graded by me or Darci.

Academic support services: SU provides a variety of tutoring and academic support services, and I encourage you to avail yourself of these resources. Doing so may help you learn the course material better, determine the best strategies for studying that material, improve your writing skills, and have less stress about your success in the course. Tutoring centers include the Tutoring & Study Center (TSC), the Writing Center, the Math and Calculus Clinics, the Physics Clinic, the Chemistry Clinic, and the Athletics Academic Services Center. Details at <<http://tutoring.syr.edu>>.

Academic integrity: The Syracuse University Academic Integrity Policy holds students accountable for the integrity of the work they submit. This means that it is your responsibility to be familiar with the Policy in general and to learn about the specific expectations of each of your instructors regarding proper citation of sources in written work. The policy also governs the integrity of work submitted in exams and assignments as well as the veracity of signatures on attendance sheets and other verifications of participation in class activities, and it prohibits students from submitting the same written work in more than one class without receiving written authorization in advance from both instructors. The presumptive penalty for a first offense by an undergraduate student is course failure, accompanied by a transcript notation indicating that the failure resulted from a violation of Academic Integrity Policy. For more information and the complete policy, see <<http://academicintegrity.syr.edu>>.

Student academic work: Because of the nature of the simulation assignment, much of the written work that you produce for this course will be viewed by other students in the course. (Your grades on these assignments, of course, will be revealed only to you.)

Reasonable accommodation: If you believe that you need accommodations for a disability, please contact the Office of Disability Services (ODS), located at 804 University Avenue, room 309 (443-4498). ODS is responsible for coordinating disability-related accommodations and will issue Accommodation Authorization Letters when appropriate. Since accommodations may require early planning and generally are not provided retroactively, please contact ODS as soon as possible. Visit the Office of Disability Services website for more details <<http://disabilityservices.syr.edu/>>.

Religious holidays: In accordance with SU's Religious Observances Policy, I will excuse any absences that result from religious observances, provided that you submit the required on-line notification form via MySlice during the first two weeks of the semester.

Office hours and email communication: My regular office hours are listed above, but you are welcome to make an appointment for some other time. If you just have a quick question, I encourage you to reach me by email. In addition, I will regularly use Blackboard's "Send email" feature to contact all members of the class. Once the simulation assignment gets rolling, you will be using this feature to contact other members of the class as well. As such, all students are responsible for regularly checking their SU email accounts throughout the semester.

Course Calendar

(This is for rough guidance of how we will progress through the semester. You should *always* consult Blackboard or my emails to the class for changes in the schedule.)

Introduction to the Supreme Court and its Power

What is the Supreme Court, who are the justices, and where does their power come from?

September 1st: Introduction to the Supreme Court

September 3rd: Development of the political power of the Supreme Court

In class: Supreme Court series, Marbury v. Madison (Showdown)

Read: Hamilton, Alexander. *The Federalist* No. 78 <<http://www.constitution.org/fed/federa78.htm>>

Read: *Marbury v. Madison* <<http://web.utk.edu/~scheb/decisions/marbury.htm>>

September 8th: Development of the political power of the Supreme Court, continued

Read: Whittington, Keith. 2005. "Interpose Your Friendly Hand": Political Supports for the Exercise of Judicial Review by the United States Supreme Court." *American Political Science Review*. 99(04), 583-596. [JSTOR]

September 10th: Judicial selection, who are the justices, how did they get there?

Watch: Confirmation hearings opening statement for John Roberts <<http://www.c-span.org/video/?c4284078/john-roberts-opening-statement>>

Read: Mauro, Tony. "Bush Got a Conservative High Court, With Caveats" [BB]

Read: Profiles of the Justices [BB]

September 15: Approaches to the study of the Supreme Court

Read: *Choices*, pp. 1-25

Read: *Reason in Law*, Chapter 1 [BB]

Simulation: Overview and Assignment

September 17th

We'll spend today (and part of the next class) introducing the simulation assignment, beginning by assigning each student a role to play. The available roles are shown in the table below. I will assign the justices and Solicitor General; everyone else will (at least initially) be assigned as a lawyer tasked with bringing a cert. petition to our simulated Court.

If you are assigned to play a justice, your first task is to learn as much as you can about that justice's understanding of the law and the Court. In addition, if you'd like, you may "hire" one student in the class to serve as your law clerk. As with real-world law clerks, he/she will assist you with reviewing cert petitions, drafting opinions, and the like. Assuming everything goes

smoothly, that student will be withdrawn from our list of student-lawyers and will serve instead as your clerk for the remainder of the semester.

Role	Assignment 1	Assignment 2	Oral component	No.
Justice	Cert dissent (or report on cert)	Opinion 1	Oral argument questioning; bench announcement	9
Clerk	Report on cert	Opinion 2	Cert recommendation	up to 9
Solicitor General (Deputy)	Amicus on cert	Merits brief	Oral arguments	3
Lawyer (cert granted)	Cert petition	Merits brief	Oral arguments; cert argument	6
Lawyer (cert denied)	Cert petition	Option: Merits brief or Opinion	Cert argument	up to 21
Amicus	Cert petition	Merits brief	Oral arguments	up to 12

If you are assigned to be the SG, your first task is to learn as much as you can about the function of the Office of the Solicitor General, the background of the current incumbent (Donald Verrilli), and the legal goals of the Obama administration. You should also begin recruiting one or more additional student-lawyers to join your staff as a Deputy Solicitor General. Your next task is to review this list of potential cases and decide which ones General Verrilli would be most likely to urge the Court to hear. Once you've done so, you should begin drafting cert. petitions (or amicus briefs in support of cert.) attempting to persuade our simulated Court to hear those cases.

If you are assigned to play a lawyer other than the SG, your first task is to choose a case that you are interested in working on. I will provide a list of potential cases. Once you have settled on a case, you should draft a cert. petition attempting to persuade our simulated Court to hear that case. Each student-lawyer will draft his/her own petition, but for the in-class presentations scheduled three weeks from now, you will have to collaborate with any other student-lawyers who are working on the same case as you.

The table above also summarizes the graded assignments involved in the simulation activity. ***This is not indicative of the full load of the assignment.*** Some roles, particularly the justices and clerks, will have to review briefs, meet in conference, etc. All of the roles will require outside research to appropriately represent the positions you are simulating. In addition to the grades for the three activities above (which will represent half of your simulation grade), you will also receive a wholistic grade that reflects these additional activities (the other half of the grade).

How do cases come to the Supreme Court?

The Supreme Court is unique among the three branches because it cannot take up any issues it wants—it can only hear cases that are brought to it by litigants under a specific set of circumstances. Then, the Court doesn't hear the case of every litigant who appeals his or her case. How do cases come to the court, and how does the court decide what cases to hear?

September 22th: The path of cases to the Supreme Court

Read: Ball, Molly. 2015. "How Gay Marriage Became a Constitutional Right." *The Atlantic*. <<http://www.theatlantic.com/politics/archive/2015/07/gay-marriage-supreme-court-politics-activism/397052/>>

Read: Toobin, Jeffery. 2007. *The Nine*. Anchor Books. (excerpt) [BB]

September 24th: The writ of certiorari

Read: *Choices*, pp. 58-65, 79-81, 118-125

Before and on a Case's Day in Court

A petition for certiorari has been granted, but what else has to happen before arguments are made in the Supreme Court's chambers? Who gets to have a say, and who can influence the Court's decisions?

September 29th: Merits briefs

What is in the briefs? What are the goals? How effective are they? (This will be useful for writing your own briefs in class)

Read: TBA

October 1st: **CERT BRIEFS DUE** The Solicitor General and *Amicus curiae*

Read: Caldeira, Gregory and John Wright. 1998. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4):1109-1128. [JSTOR]

October 6th: Oral arguments: What happens and do arguments matter?

Listen: *Obergefell v. Hodges* (Part 1, 90 minutes) < http://www.oyez.org/cases/2010-2019/2014/2014_14_556/argument-1>

Read: Johnson, Timothy R., Paul J. Wahlbeck and James F. Spriggs, II. 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *The American Political Science Review*. Vol. 100, No. 1, pp. 99-113. [JSTOR]

Simulation: Certiorari

October 8th

Simulation: Certiorari hearings

October 13th

Simulation: Certiorari hearings

Supreme Court Decisionmaking: The Collegial Court

October 15th: **CERT DECISIONS DUE** The Conference

Read: *Choices*, pp. 25-27, 88-95.

Read: Perry, H.W. 2009. *Deciding to decide: agenda setting in the United States Supreme Court*. Harvard University Press. (excerpts) [BB]

October 20th: Precedent: does it bind?

Read: Bailey, Michael A., and Forrest Maltzman. 2008. "Does legal doctrine matter? Unpacking law and policy preferences on the US Supreme Court." *American Political Science Review* 102(03): 369-384. [JSTOR]

October 22nd: How do the justices decide?

Read: Keck, Thomas M. 2007. "Party, Policy, or Duty: Why Does the Supreme Court Invalidate Federal Statutes?" *American Political Science Review* 101(02): 321-338. [JSTOR]

Read: Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the attitudinal model revisited*. Cambridge University Press. (excerpts) [BB]

October 27th: Bargaining on the Supreme Court

Read: *Choices*, pp. 28-51, 56-58, 65-79, 95-107

Supreme Court Decisionmaking: External Influences

November 3rd: Judicial independence: Is the Court a danger to democracy?

Read: Bickel, Alexander M. 1986. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Yale University Press. (excerpts) [BB]

November 5th: **MERITS BRIEFS DUE** Judicial independence: does it exist?

Read: *Choices*, pp. 82-88, 138-157

Read: Graber, Mark A. 1993. "The Nonmajoritarian Difficulty: Legislative deference to the judiciary." *Studies in American Political Development*, 7(01): 35-73. [BB]

November 10th: The Supreme Court and Public Opinion

Read: *Choices*, pp. 157-177

Read: Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87(01): 87-101. [JSTOR]

Simulation: Oral Arguments

November 12th

Simulation: Oral Arguments

November 17th

Simulation: Oral Arguments

November 19th

Simulation: Oral Arguments

November 24th and 26th

*****NO CLASS THANKSGIVING*****

Power of the Court: Can the Court create change?

December 1st: Limits of Supreme Court power

Read: Rosenberg, Gerald N. 2008. *The Hollow Hope: Can courts bring about social change?* University of Chicago Press. [BB]

December 3rd: **OPINIONS DUE** Overcoming the *Hollow Hope*

Read: Keck, Thomas M. 2009. "Beyond backlash: Assessing the impact of judicial decisions on LGBT rights." *Law & Society Review* 43(1): 151-186. [JSTOR]

Read: Hall, Matthew E. 2010. *The Nature of Supreme Court Power*. Cambridge University Press. [BB]

Simulation Assignments: Decision Day

December 8th

Simulation: Announcement of decisions and reading of opinions

December 10th: Wrap-up and review

December 18th: FINAL EXAM, 8:00 AM to 10:00 AM