

# Law or Politics? The U.S. Supreme Court and the Meaning of the Constitution

GVPT 202 — Spring 2019

Lecture: Monday & Wednesday 1:00-1:50pm, 2102 Shoemaker Hall

Discussion Section: Friday (time & room location vary by section)

## **Instructor:**

Patrick Wohlfarth

Office Hours: Mon/Wed 2:00-3:00pm, or by appt.

Office: 1115C Tydings Hall

patrickw@umd.edu

## **Teaching Assistants:**

Tristan Hightower (sections: #0104, 0105 & 0106)

Office Hours: Wed 10:00am-12:00pm, or by appt.

Office: 5109 Tydings Hall

thighto@terpmail.umd.edu

Jennifer St. Sume (sections: #0101, 0102 & 0103)

Office Hours: Thurs 10:00am-12:00pm, or by appt.

Office: 5109 Tydings Hall

The modern U.S. Supreme Court regularly issues decisions that have a significant impact on the most divisive public policy issues in contemporary politics. In recent years, the Court has published opinions to define the state of the law over rights to private gun ownership, the constitutionality of corporate- and union-funded campaign contributions, the extent of presidential power to detain suspects of terrorism at Guantanamo Bay, the death penalty as a criminal sentence for child rape, affirmative action policy in American higher education, the constitutionality of President Obama's Affordable Care Act, and constitutional protection of same-sex marriage. These cases, among others, have defined critically the meaning of the U.S. Constitution and the rule of law, and have defined the boundaries within which elected officials make public policy.

Yet, the meaning of the Constitution, while often thought to be a product of constant, unbiased jurisprudence, is not static; it is subject to change. Indeed, the "rule of law" has shifted noticeably over time in response to societal changes, political forces, and turnover in the justices themselves. To understand fully the U.S. Constitution, the state of American law, and how they influence the state of public policy in the United States, one must think critically about the role of the U.S. Supreme Court in American politics. It demands an examination of the diverse set of considerations—including the competing roles of political change and a desire for legal continuity—that shape U.S. Supreme Court decisions and the fluid state of constitutional law. Students will consider these ideas and the open-ended debates in which

scholars engage continually over the determinants of legal change and the prevailing interpretation of the U.S. Constitution. In doing so, students will draw upon interdisciplinary approaches from political science, law, economics, psychology, and linguistics to convey a systematic approach to studying the Supreme Court, its decisions, and judicial policy in the United States.

## Course Description & Learning Objectives

This course offers a thorough examination of the U.S. Supreme Court and its impact on the meaning of the U.S. Constitution, including recent issues the Court has decided and current pending cases. A critical component will involve peer deliberation over the proper roles of law and politics, and their potential impacts, on salient constitutional issues of the day. The constitutional case studies, occurring periodically throughout the semester, will include group and classroom discussions of select issues being considered by the sitting Court. In doing so, students will learn the foundational concepts of how the Court operates as both a legal and political institution, as well as its place in the larger political system. Special emphasis will be given to the social scientific study of the Supreme Court, including topics such as judicial selection, the Court's agenda-setting and control of its docket, and decision making on the merits.

This is a 3-credit undergraduate I-series course designed to facilitate learning by students from any substantive discipline. Students must complete all assigned readings, come to class prepared and on time, and actively participate in classroom discussions. Following this course, students should be able to:

- Deliberate about the competing roles of political change and desire for legal continuity on the interpretation of the U.S. Constitution.
- Identify and explain the Court's institutional policymaking process while emphasizing the important factors that influence the justices at each stage of their decision-making process.
- Describe the Supreme Court's role in the larger American political system, its place in the separation of powers, and how the political environment shapes judicial policy.
- Identify different systematic methodological tools and analytical approaches that social scientists (and academic experts) use to study the Supreme Court's decision making and the importance of those decisions to public policy in the United States.
- Improve writing skills and the ability to articulate analytical writing in a clear and cohesive manner.

## Course Reading

There are two required books for this course:

- Baum, Lawrence. 2018. *The Supreme Court* (13th ed.). Washington: CQ Press.
- Tribe, Laurence and Joshua Matz. 2015. *Uncertain Justice: The Roberts Court and the Constitution*. New York: Picador.

I encourage all students to regularly follow the ongoing activities of the Court during the 2018 term—oral arguments, *certiorari* petitions, and published opinions—prior to class each day, as I will often integrate them into classroom discussions. In addition to coverage in major newspapers (e.g., *New York Times*, *The Washington Post*), the *SCOTUSblog* is a superb resource to stay informed about all the action happening on the Court (available at: <http://www.scotusblog.com/>). *Please Note:* I may announce additional (required) readings during the semester and post them on the Elms course website (<https://Elms.umd.edu>).

## Course Requirements & Evaluation

Students' final grades will reflect the sum of points earned from each of the following categories:

Short Oral Argument Papers (four total)	20%
Group Presentation	15%
Midterm Exam	20%
Final Exam	20%
Attendance	10%
Quizzes (administered in section)	15%

Grades are defined below and are based upon how many points you earn according to the following distribution:

A+	“Excellent mastery of the subject”	97-100 pts.
A		93-96 pts.
A-		90-92 pts.
B+	“Good mastery of the subject”	87-89 pts.
B		83-86 pts.
B-		80-82 pts.
C+	“Acceptable mastery of the subject”	77-79 pts.
C		73-76 pts.
C-		70-72 pts.
D+	“Borderline understanding of the subject”	67-69 pts.
D		63-66 pts.
D-		60-62 pts.
F	“Failure to understand the subject”	fewer than 60 pts.

## Attendance, Participation & Quizzes

I expect students to come to class prepared, participate in classroom discussions, and demonstrate comprehension of the assigned reading. The teaching assistant will administer several quizzes (likely four or so) in discussion section, and I will announce them during the lecture class (Monday and/or Wednesday) prior to that week's discussion section. Quizzes will feature two short open-ended questions based on the current week's course material and the reading assigned for that day. The objective of this policy is to improve the substantive quality of in-class discussions and to incentivize regular reading and attendance.

**IMPORTANT:** The teaching assistant will administer a quiz only at the beginning of class. If you are late, he or she will still collect all quizzes 15 minutes after the start of class, regardless of successful completion. Any quiz missed due to an unexcused absence will result in a zero grade (with no exceptions). An absence will only be excused if you present the appropriate documentation. If you miss a quiz due to an excused absence, you must contact your teaching assistant **within one week following your return to class** in order to arrange a makeup. Failure to arrange a makeup date within this one-week period will result in a zero grade for the missed quiz.

## Exams

There will be two exams in this course—an in-class midterm and final examination. I will notify you of the precise format at least one week in advance of each exam. You can expect the exams to test your knowledge of the lectures, in-class discussions, and required readings. Generally, exams are designed to test students' knowledge of both the "political, social, economic, and ethical dimensions involved in the course" and "basic terms, concepts, and approaches that experts employ" in studying law and politics on the U.S. Supreme Court. Regular attendance, reading, and attentiveness will be critical to achieve success on each exam.

## Mock Oral Arguments & Short Papers

During five class meetings, a select group of students will engage in a mock oral argument of a select case currently being considered by the U.S. Supreme Court (cases TBA). I will structure, and facilitate, these mock oral argument sessions around salient, interesting issues on the Court's docket. Approximately two weeks into the semester, I will randomly divide each discussion section into groups of four students and assign each group a case and role to argue during a future class meeting. Three groups will participate in each mock oral argument — one group will argue as the petitioner's attorneys, one group will argue as the respondent's attorneys, and the third group will sit as justices. During a single lecture meeting, we will hold two mock oral arguments (i.e., two cases) and divide the argument time between each side of the case (approximately 20 minutes per case). By the end of the semester, each group will have participated in one mock oral argument (although you will be responsible for preparing a written oral argument brief for four featured cases—see below).

Students will be graded on their presentations—and quality of preparation—by the instructor and the teaching assistants. This means that students will have read the relevant case history and major precedents, can discuss them, and can discuss other aspects of the case that may matter (i.e., policy implications). This is equally true for both attorneys and justices. Each individual student’s grade on the group presentation will also incorporate a peer evaluation by fellow group members (to minimize free-riding by a group member). Before participating in the scheduled oral argument, I encourage the whole group to meet with the teaching assistant to seek feedback and guidance. I will also allocate time during select discussion sections for group planning. In sum, each student’s group presentation grade will contribute 15% to the final course grade.

I expect students to come to class prepared, having read assigned background material on these case studies. The purpose of these oral argument sessions is to promote the pedagogical mission of the I-Series by encouraging students to “communicate major ideas and issues raised by the course through effective written and/or oral presentations.” They are also designed to encourage students to “think in new ways about their lives” and the political vs. legal dimensions of the U.S. Constitution.

To help facilitate these discussions, all students must select four (of the ten) cases and prepare a short (3-4 pages, 1-inch margins) oral argument brief for each case that addresses the background facts of the case, outlines the legal question(s), and makes an argument about how the Court should decide the case (and why). I expect students to submit these writing assignments at the beginning of class (on the day of the case’s scheduled oral argument), and the four papers will contribute a total of 20% to the final course grade. Late papers will be subject to a 10% penalty (10 points) **per day** beyond the due date. More details will follow two weeks into the semester.

Here are some excellent resources for researching cases appearing before the U.S. Supreme Court (during the current October 2016 term):

- (1) <http://www.scotusblog.com/case-files/terms/ot2018/>
- (2) <http://www.supremecourt.gov/>

## Course Policies

Please consult the general list of classroom policies, prepared by the Office of Undergraduate Studies at: <http://www.ugst.umd.edu/courserelatedpolicies.html>. The following are relevant course-specific policies to supplement those from Undergraduate Studies:

### Academic Integrity

Academic integrity is a core value of institutions of higher learning. It is your responsibility to refrain from engaging in plagiarism, cheating, and dishonest behavior. The official university honor code policy is located at: <http://www.president.umd.edu/policies/iii100a.html>. Needless to say, exams, quizzes, and the assigned term paper should reflect only your own work. But, studying and class preparation can (and should) be done with others.

## Students with Disabilities

I will make every effort to accommodate those who register with the Disability Support Service (DSS) office and provide a University of Maryland DSS Accommodation form. I can only accommodate those who present the required written DSS documentation.

## Excused Absence Policy

If at all possible, you should give advance notice if you must miss class (and have an accepted, verifiable excuse). When advance notice is not feasible, you must present the appropriate documentation **on the very next class that you are in attendance** in order to verify that your absence should be excused. Consistent with university guidelines, excused absences only occur “due to illness, religious observance, participation in University activities at the request of University authorities, or compelling circumstances beyond the student’s control.” No student will be allowed to make up a quiz, exam, or request an extension on the term paper deadline without a verifiable excused absence.

You may submit a self-signed note in order to be excused for missing one class. This note must include the date of illness, a statement that the information you have provided is true, and must be signed by you. You must also state that if your absence is found to be false, you understand that you will be referred to the Office of Student Conduct. Please note that official university policy states only one self-signed note for a single absence will be allowed. For all other non-consecutive absences, I will require written documentation from the Health Center or a medical doctor. Please also note that scheduled exam dates and the term paper due date are considered major grading events, and thus a self-signed note will not be sufficient to verify an excused absence on these three class days. Lastly, please be aware that university policy requires a written request (within the first two weeks of the semester) from any student who must miss a scheduled class due to a specific religious observance.

# COURSE SCHEDULE

The following is a (tentative) class and reading schedule, which is subject to change. It is essential that you do not fall behind in the reading, as it will be difficult to catch up. **Note:** Required readings listed each day should be completed **PRIOR** to the start of class.

## Week 1 — The Roberts Court & A Primer on Judicial Power

- Consider the major issues and major decisions issued by the Roberts Court.
- Discuss the constitutional (and institutional) foundations of the U.S. Supreme Court.
- Consider the U.S. Supreme Court in an historical context, including its institutional capacity and the development of its decision-making authority in the American political system.

January 28: Course Introduction

January 30: Baum Ch. 1 (pp. 1-29)

February 1 (section): Baum Ch. 1 (pp. 1-29)

## **Week 2 — Judicial Power & Theories of Judicial Decision Making**

- Provide an overview of the central theoretical perspectives of Supreme Court decision making and discuss their respective strengths and weaknesses.
- Discuss observable (empirical) implications of different theoretical perspectives and consider systematic analytical approaches to distinguish between them.

February 4: Baum Ch. 4 (pp. 113-161)

February 6: Baum Ch. 4 (pp. 113-161)

February 8 (section): *Federalist No. 78* (Elms)

## **Week 3 — Judicial Selection: Appointment & Confirmation**

- Discuss each stage of the judicial selection process, including the principal actors and decision-making motivations behind the departure, appointment, and confirmation of Supreme Court justices.
- Consider systematic evidence to better understand political behavior at each stage of the judicial selection process.

February 11: Baum Ch. 2 (pp. 31-72)

February 13: Baum Ch. 2 (pp. 31-72)

February 15 (section): Collins & Ringhand (2015): “The Institutionalization of Supreme Court Confirmation Hearings” (Elms)

## **Week 4 — Agenda-Setting & Oral Argument**

- Discuss how the Supreme Court’s agenda-setting process operates, including how that process has evolved over time.
- Consider analytical approaches to systematically examine why justices decide to review certain cases (and not others) and how the agenda-setting process critically shapes judicial policy.
- Discuss the purpose of oral argument in the Supreme Court’s decision-making process.

February 18: Baum Ch. 3 (pp. 73-112)

February 20: Baum Ch. 3 (pp. 73-112)

February 22 (section): Tribe & Matz, Prologue (pp. 1-14)

## **Week 5 — The Fourteenth Amendment**

- Examine recent decisions of the Roberts Court on the 14th Amendment and how they have shaped the meaning of the Constitution.

February 25: Tribe & Matz, Ch. 1 (pp. 15-51)

February 27: Tribe & Matz, Ch. 1 (pp. 15-51)

March 1 (section): *Obergefell v. Hodges* (2015) (Elms)

## **Week 6 — The Supreme Court & Health Care**

- Examine the constitutional foundations of the Roberts Court's recent health care decision—*National Federation of Independent Businesses v. Sebelius* (2012)—(and its aftermath) and how the decision has shaped public policy.

March 4: Tribe & Matz, Ch. 2 (pp. 52-87)

March 6: Tribe & Matz, Ch. 2 (pp. 52-87)

March 8 (section): *National Federation of Independent Businesses v. Sebelius* (2012) & *Burwell v. Hobby Lobby* (2014) (Elms)

## **Week 7 — Mock Oral Arguments #1 & Midterm Exam**

- Hold student-led mock oral arguments on two cases (TBA) currently pending before the Supreme Court.

March 11: **Mock Oral Arguments #1**

March 13: ***Midterm Exam***

March 15 (section): No Section Meeting

March 18: Spring Break (no class)

March 20: Spring Break (no class)

March 22: Spring Break (no class)



## Week 8 — Campaign Finance

- Examine recent Supreme Court decisions on campaign finance—principally, *Citizens United v. Federal Election Commission* (2010)—and how they have shaped the meaning of the Constitution and the conduct of elections in the United States.

March 25: Tribe & Matz, Ch. 3 (pp. 88-120)

March 27: Tribe & Matz, Ch. 3 (pp. 88-120)

March 29 (section): *Citizens United v. Federal Election Commission* (2010) (Elms)

## Week 9 — Mock Oral Arguments #2 & Freedom of Speech

- Hold student-led mock oral arguments on two cases (TBA) currently pending before the Supreme Court.
- Examine recent decisions of the Roberts Court on the 1st Amendment (free speech) and how they have shaped the meaning of the Constitution.

April 1: **Mock Oral Arguments #2**

April 3: Tribe & Matz, Ch. 4 (pp. 121-153)

April 5 (section): *Morse v. Frederick* (2007) (Elms)

## Week 10 — Freedom of Speech & Mock Oral Arguments #3

- Examine recent decisions of the Roberts Court on the 1st Amendment (free speech) and how they have shaped the meaning of the Constitution.
- Hold student-led mock oral arguments on two cases (TBA) currently pending before the Supreme Court.

April 8: Tribe & Matz, Ch. 4 (pp. 121-153)

April 10: **Mock Oral Arguments #3**

April 12 (section): *Packingham v. North Carolina* (2017)

## Week 11 — The Second Amendment & Guns

- Examine recent decisions of the Roberts Court on the 2nd Amendment (gun ownership & regulation) and how they have shaped the meaning of the Constitution.

April 15: Tribe & Matz, Ch. 5 (pp. 154-184)

April 17: Tribe & Matz, Ch. 5 (pp. 154-184)

April 19 (section): *District of Columbia v. Heller* (2008) (Elms)

## **Week 12 — Presidential Power & Mock Oral Arguments #4**

- Examine recent decisions of the Roberts Court on issues of presidential power and how they have shaped the meaning of the Constitution.
- Hold student-led mock oral arguments on two cases (TBA) currently pending before the Supreme Court.

April 22: Tribe & Matz, Ch. 6 (pp. 185-218)

April 24: **Mock Oral Arguments #4**

April 26 (section): *Boumediene v. Bush* (2008) & *Trump v. Hawaii* (2018) (Elms)

## **Week 13 — Privacy & The Constitution**

- Examine recent decisions of the Roberts Court on issues of privacy and how they have shaped the meaning of the Constitution.

April 29: Tribe & Matz, Ch. 7 (pp. 219-252)

May 1: Tribe & Matz, Ch. 7 (pp. 219-252)

May 3 (section): *Maryland v. King* (2013) (Elms)

## **Week 14 — Opinion Writing & Judicial Impact**

- Discuss the process of opinion writing on the Supreme Court and the different types, and principal components, of judicial opinions.
- Examine the potential role of strategic decision making in crafting the language of opinions (and thus the meaning of constitutional and statutory interpretation) on the Supreme Court.
- Consider the degree to which Supreme Court decisions can generate, or at least catalyze, broad social change in American politics.

May 6: Baum Ch. 5 (pp. 163-193)

May 8: Baum Ch. 6 (pp. 195-242)

May 10 (section): Tribe & Matz, Epilogue (pp. 315-320)

## Week 15 — Mock Oral Arguments #5

- Hold student-led mock oral arguments on two cases (TBA) currently pending before the Supreme Court.

May 13: **Mock Oral Arguments #5**

**Final Exam: Friday, May 17, 1:30-3:30pm**

### **One Final Note:**

All grade appeals **will only be considered in writing**. Should you believe that you deserve a higher grade on an exam, quiz, or a paper, you must write a paragraph or so outlining your case and why the grade should be changed. After you submit this written appeal, your teaching assistant and I will then be happy to read your explanation and re-grade your exam, quiz, or paper. The deadline for consideration of any appeal will be **one week** following receipt of a particular grade. Of course, you may always ask questions for clarification, but no grade changes will be considered that you have not conducted in writing (or that you fail to submit before the one-week deadline).

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