

Seminar in American Politics: The U.S. Supreme Court

GVPT 479F – Fall 2015

Wednesday, 2:00–4:45pm, 0103 Jimenez Hall

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“The Executive not only dispenses honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm for the efficacy of its judgment.” — Alexander Hamilton, *Federalist No. 78*

The modern U.S. Supreme Court regularly issues decisions that have a significant impact on the most pressing public policy issues in contemporary politics. In recent years, the Court has published opinions to adjudicate disputes over the right to private ownership of firearms, 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. Yet, behind each landmark ruling is an institutional framework that is far removed from the public eye. The justices seldom appear in public and their decision-making processes are largely insulated from direct public scrutiny. Although the Court’s final decisions attract the most widespread attention from the media and mass public, it is the institutional process preceding those judgments that critically determines the substance of judicial policy.

The Supreme Court is primarily a legal institution that clarifies both constitutional and statutory interpretation while establishing precedents intended to direct the decisions of all lower federal courts. Yet, the Court is also a political institution that is situated in a complex separation of powers with justices that hold their own political values. As Alexander Hamilton notes in *Federalist No. 78*, the Supreme Court cannot, by itself, implement its decisions, as the justices merely have judgment and must rely on the support of the elected branches. The justices’ decisions, as a result, often reflect multiple considerations related to the law, politics, and the Court’s position in the larger separation of powers.

What are the primary factors that contribute to presidential appointments to the Court and successful confirmation before the U.S. Senate? How do Supreme Court justices manage the Court's caseload and what leads them to choose some cases while rejecting most others? What impact might oral argument have on the Court's eventual decisions? What are some potential considerations that might shape the justices' votes, such as legal precedent, political preferences, and public opinion? How do the justices manage their internal decision making during conference discussion? What are the interactions that regularly occur between the justices during the opinion-writing process? This course will consider these questions (among others) to better understand the Supreme Court as an institution and the implications of its decisions for contemporary public policy.

Course Description and Goals

This course offers a thorough examination of the U.S. Supreme Court in the American political system. We will focus primarily on the Court as an institution—that is, the set of norms, rules, and policymaking processes that lead to the High Court's decisions. Although the study of legal doctrine (e.g., constitutional law) is central to understanding the Supreme Court's role in American government, this course will emphasize the institutional processes by which the justices create substantive policy (and not the content of legal doctrine itself). In doing so, we will investigate how the Court operates as both a legal and political institution, as well as its place in the larger political system. This course will also emphasize the social scientific study of the Supreme Court, involving 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 course designed to meet an upper-level requirement for the Government & Politics major. Students must complete all assigned readings, come to class prepared and on time, and actively participate in classroom discussions. The primary aim is to familiarize students with: the institutionalization of the Supreme Court over time, the manner in which the justices receive their seats on the bench, and the step-by-step process involved in the Court's consideration of an individual case and decision in each formal dispute. Following this course, you should be able to:

- Assess the numerous factors that affect the judicial selection process, including the president's primary considerations when making an appointment to the Supreme Court and the major factors influencing Senate confirmation.
- Identify and explain the Court's institutional policymaking process while emphasizing the important factors that influence the justices' decision making at each stage.
- 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.

Course Reading

There are three required books for this course:

- Baum, Lawrence. 2012. *The Supreme Court* (11th ed.). Washington: CQ Press.
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington: CQ Press.
- Perry, Barbara A. 2007. *The Michigan Affirmative Action Cases*. Lawrence: University Press of Kansas.

I encourage all students to regularly follow the ongoing activities of the Court during the 2015 term—oral arguments, *certiorari* petitions, and published opinions—prior to class each day, as I will regularly integrate them into classroom discussions. In addition to coverage in major newspapers (e.g., *New York Times*), 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 and Evaluation

Your final grade will reflect the sum of points earned from each of the following assignments:

Pop Quizzes (average after one drop)	20%
Midterm Exam	25%
Final Exam (non-cumulative)	25%
Term Paper	30%

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 and Pop Quizzes

I expect you to come to class prepared, participate in classroom discussions, and demonstrate comprehension of the assigned reading. I will administer at least five pop quizzes over the course of the semester. I will drop your lowest quiz grade, and thus your average grade on all remaining quizzes will contribute 20% to your final course grade. 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 pop quiz policy is to improve the substantive quality of in-class discussions and to incentivize the regular reading and attendance necessary to maximize your learning potential in this course.

IMPORTANT: I will administer a quiz only at the beginning of class. If you are late, I 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 me **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 examinations in this course—an in-class midterm and a non-cumulative final examination. The format of each exam will consist of short-answer and essay questions. 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. Regular attendance, reading, and attentiveness will be critical to experience success on each exam.

Term Paper

You will complete one written term paper in this course. The term paper will require analytical, critical thinking where you must apply concepts learned during the course. The goal is to help you improve your critical thinking skills while making reasoned arguments. More details will follow on the specific description and scope of the paper. Late papers will be accepted, but will be subject to a 10% penalty (or 10 pts.) **per day** beyond the due date.

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 (with advance notice). This is a reading-intensive, upper-level course. Thus, 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.

September 2: No Class Meeting (APSA Conference)

September 9: Social Scientific Study & History of the Court

- Course Introduction & Syllabus Review
- Baum, Ch. 1 (pp. 1-27)

September 16: Institutionalization & Decision Making

- McGuire (2004): “The Institutionalization of the U.S. Supreme Court” (Elms)
- Perry Ch. 1-2 (pp. 1-42)

September 23: Theories of Decision Making; Judicial Retirements

- Epstein & Knight, Ch. 1-2 (pp. 1-55)
- Perry Ch. 3 (pp. 43-62)

September 30: Retirement & Selection of the Justices

- Baum, Ch. 2 (pp. 28-68)
- Black & Owens (2015): “Courting the President: How Circuit Court Judges Alter Their Behavior for Promotion to the Supreme Court” (Elms)
- Collins & Ringhand (2015): “The Institutionalization of Supreme Court Confirmation Hearings” (Elms)

October 7: Attorneys & Interest Groups

- Baum, Ch. 3 (pp. 69-86)
- Box-Steffensmeier, Christenson, & Hitt (2013): “Quality Over Quantity: Amici Influence and Judicial Decision Making” (Elms)
- Black & Owens (2013): “A Built-In Advantage: The Office of the Solicitor General and the U.S. Supreme Court” (Elms)

October 14: The Supreme Court’s Agenda

- Baum, Ch. 3 (pp. 86-104)
- Black & Owens (2009): “Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence” (Elms)
- Perry Ch. 4 (pp. 63-86)

October 21: Midterm Exam

October 28: Briefs & Oral Argument

- Johnson, Spriggs, & Wahlbeck (2006): “The Influence of Oral Arguments on the U.S. Supreme Court” (Elms)
- Black, Treul, Johnson, & Goldman: “Emotions, Oral Arguments, and Supreme Court Decision Making” (Elms)
- Perry Ch. 5-6 (pp. 87-134)

November 4: Opinion Writing & The Collegial Court

- Baum, Ch. 4 (pp. 105-114)
- Epstein & Knight, Ch. 3-4 (pp. 56-137)

November 11: Decision Making on the Merits

- Baum, Ch. 4 (pp. 114-140)
- Perry Ch. 7 (pp. 135-156)

November 18: The Separation of Powers & Public Opinion

- Baum, Ch. 4 (pp. 140-154)
- Epstein & Knight, Ch. 5-6 (pp. 138-186)

November 25: No Class Meeting (Thanksgiving Holiday)

December 2: Public Opinion (part II); Law Clerks

- **Term Paper Due**

December 9: Consequences & Impact of Judicial Policymaking

- Baum, Ch. 5-6 (pp. 155-227)
- Perry Ch. 8 (pp. 157-178)

Final Exam (non-cumulative):

- **December 17, 1:30-3:30pm, 0103 Jimenez Hall**

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 the term paper, you must write a paragraph or so outlining your case and why the grade should be changed. After you submit this written appeal, 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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