

POLI 202: The U.S. Supreme Court

Fall 2018

Tuesday & Thursday 2:00 p.m. – 3:15 p.m.
Phillips Hall 247

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Office Hours: Monday, Wednesday and Thursday from 11:00 a.m.–12:00 noon.

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Course Overview and Objectives

In *Federalist* 78, Alexander Hamilton wrote that “the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution...The judiciary... 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.” In spite of this pronouncement, the judiciary, and particularly the Supreme Court, has come to occupy a central position in the American political system, issuing decisions that continue to have lasting impacts on American society. In recent terms, the Court has tackled controversial issues in cases concerning abortion, campaign finance, voting rights, and affirmative action, handing down decisions that have reshaped how elections are conducted and how individuals may enjoy important rights and liberties.

Our class meets at a pivotal moment in the history of the Court. The recent confirmation of Neil Gorsuch to fill the long-empty seat of Antonin Scalia, the retirement of Justice Anthony Kennedy and the nomination of Brett Kavanaugh, and the Court’s recent decisions on partisan gerrymandering, labor disputes, and religious exemptions from anti-discrimination laws, all have great importance for the future of the Court’s jurisprudence. Given these developments, there is no better time to understand how the Supreme Court operates and the role it plays in American politics.

Throughout this class, we will also be attentive to how theories of Supreme Court decision-making apply to current events and the problems that government and citizens face today. Thus, students will supplement the knowledge gained from published academic work with selected articles from newspapers and magazines. Along the way, students will develop practical skills that will be beneficial in their future coursework and beyond.

By the end of this class, students will:

- Understand the roles that the United States Supreme Court play in the American political system and how such roles have changed over time.
- Acquire a working knowledge of the various stages of Supreme Court decision-making and how factors in each stage impact outcomes for litigants and society
- Gain an increased awareness of current developments in Supreme Court jurisprudence, including the impact of membership change on Court precedent
- Apply their knowledge of political science theories of the Supreme Court to an understanding of the Court’s decisions

- Improve their ability to formulate and defend ideas through critical analysis of evidence and communicate these ideas through speaking and writing.

Please note that this course is not a constitutional law class. While we will often reference landmark Supreme Court decisions and cover the evolution of the Court, the primary focus of this class will be on how the Supreme Court operates and interacts with other institutions in the American political system.

Required Texts:

- David O'Brien. 2017. *Storm Center: The Supreme Court in American Politics*. 11th edition. W.W. Norton & Company.
- Lawrence Baum. 2016. *The Supreme Court*. 12th edition. Sage.

The above texts are required and can be purchased at UNC Student Stores. In the schedule of required readings listed below, *Storm Center* refers to the O'Brien text, and *Supreme Court* refers to the Baum book. Several book chapters or excerpts assigned during the semester will be made available to students on E-Reserves through our Sakai site. These readings are labeled E-RES on the syllabus. Readings that are not from the required texts or under E-Reserves are available through the UNC library. **Please note that this is a rigorous and demanding course that requires a fair amount of reading. Students should complete all readings prior to class time and be prepared to discuss.**

Course Requirements

- **Please note that students must complete all assignments to receive a grade for the course.**
- **Papers (2) 30%** Two outside of class papers will be assigned during the class and will be five pages in length. Each paper is worth 15% of the final course grade. The first paper will be due on **September 27**. The second paper will be due on **November 29**. Paper topics will be made available to students approximately two weeks prior to the assignment's due date. Students may use any citation style they choose on papers so long as they remain consistent throughout that paper. Papers turned in late will be penalized a third of a letter grade for each day late. (For example, a B+ paper would become a B if turned in within 24 hours after it was due.) In addition, written assignments that do not follow the guidelines of the assignment and/or have poor grammar and spelling will be penalized. I am happy to assist students with any questions about the paper. However, I will only read and provide comments on outlines, thesis statements, or a brief paragraph in advance of the paper's due date.
- **Midterm Exam 20%** One midterm exam will be given in class on Thursday, October 11. The exams will consist of a variety of question forms, including multiple choice, short answer, and essay. As a general rule, make-ups for exams will not be given. Students who must miss exams because of scheduled activities of an official UNC student organization, a religious holiday, or a verifiable illness should contact me in advance of missing an exam so that alternative arrangements can be made.
- **Final Exam 25%** A final exam will be given in the normal classroom during the period set by the Office of the Registrar. **For our class, the final exam is scheduled for December 8 at 2**

pm. As with the midterm, the final exam will consist of a variety of question forms, including multiple choice, short answer, and essay.

- **Reading Quizzes 5%** Five times throughout the semester, students will complete a short reading quiz given at the beginning of class. These quizzes will consist of fill-in-the-blank, multiple choice, or short response questions designed to ensure students are keeping up with the readings. Each quiz will comprise 1% of a student's final course grade.
- **Discussion Questions 5% Twice** during the semester, each student will be responsible for submitting **two** discussion questions about the readings for their selected class day. You may be confused about something and want clarification, you might disagree with something an author says, or you might point out an interesting part of the readings for our class to consider during discussion. Discussion questions may also be broader questions that link the issues raised in the readings with other topics already considered in the course or with events from the real political world. These questions will help to structure the day's discussion. Submitted questions should be brief (one or two sentences in length). These questions will be graded on quality, so students should not submit questions that require only factual explanation. On the first day of class, students will sign up for the two different days they will be responsible for discussion questions. Discussion questions should be emailed to the instructor by **11:59 p.m.** the night before class.
- **Your Contribution to the Class 10%** Because learning is a collaborative process, students will be evaluated based on their engagement in class. Students who would like to receive a high grade for this portion of the course grade should actively and consistently participate in all aspects of class discussion, including discussion about the class readings, in-class group activities, simulations, and debates. Participation is more than just attending class. Participation means engagement in class discussion and activities and can take the form of asking questions to spur class discussion, completing in-class writing assignments and reading quizzes, stopping by office hours to discuss course readings and materials, sharing thoughts about the course material with me via email, contributing ideas for topics I could cover in class, and sending me videos, articles, websites, etc. that could be used for class. I want you to demonstrate that you are engaging with the material. I expect both quality and quantity with respect to class participation, and I will be taking note of your participation during our class meetings. Midway through the semester, I will provide estimates of where students are in terms of participation, and I will also ask students to evaluate aspects of the class.
- **Attendance 5%** Attendance in this class is **mandatory** and will be taken each class period. Students cannot expect to earn high participation scores without being in class to engage in class discussion and ask questions during lecture. I recognize that emergencies and unexpected events arise which require students to miss class. Thus, students are afforded one unexcused absence from class, after which every additional unexcused absence will count against your attendance grade. Legitimate excuses are required for all absences, and I reserve the right to ask for documentation. If multiple classes are missed due to circumstances beyond your control, including illness, family emergency, participation in official UNC functions such as athletics or performances, etc., please let me know, and we can talk about how you can make up the lost class time without your grade being adversely affected. I will post attendance records after each class on Sakai. If you think you have been unfairly marked absent, please address this with me sooner rather than later in the semester.

Grading Scale

- A (93%-100%); A- (90%-92%)
- B+ (87%-89%); B (83%-86%); B- (80%-82%)
- C+ (77%-79%); C (73%-76%); C- (70%-72%)
- D+ (67%-69%); D (60%-66%)
- F (0%-59%)

A final grade of “incomplete” will only be given in this course under exceptional circumstances. An “incomplete” is solely at the discretion of the instructor. If a student needs to withdraw from the class, students should follow the rules specified by the Office of the University Registrar at <http://registrar.unc.edu/guide/registration-policies/drop-add-procedures/rules-course-drops/>. In addition, student support services are offered through the Office of the Dean of Students. See <https://deanofstudents.unc.edu/student-support> for information. Finally, students should contact their Academic Deans to assist with academic matters that relate to their specific school or college. Please visit <http://www.unc.edu/academics/> to find your College or school’s Academic Dean.

Office Hours and Communication

Outside of class or office hours, please communicate with me through my campus email account, which I have provided at the top of the first page of this syllabus. I will respond to email communication as promptly as possible.

My office hours are listed at the beginning of this syllabus, and I strongly encourage students to make use of office hours for help with any and all class questions and assignments. I really enjoy talking with students, whether it be about class discussions, assignments, obscure movies and books, places to eat in Chapel Hill, etc. Office hours are for your benefit, so please make the most of them. If you are not able to make it to office hours during the times listed, please email me to schedule a more convenient appointment time. Email is reserved for brief communications. Please come to office hours if you have lengthy or complicated questions. Moreover, following the return of graded assignments, I will not answer questions about the assignment for twenty-four hours. Please use those twenty-four hours to reflect on the comments given before contacting me with questions.

Poll Everywhere

I love finding interactive, educational, and enjoyable uses for technology in the classroom. One such use of classroom technology for us this semester will be Poll Everywhere, which enables me to poll the class about a particular topic and then instantly collect and display the results. You can respond to in-class polls through sending a text message, accessing our Poll Everywhere webpage, or downloading and using the Poll Everywhere app. I encourage you to bring your phone, tablet, laptop, etc. to class for this purpose. You will need to register for a Poll Everywhere account and can visit this website for instructions on doing so: <http://help.unc.edu/help/poll-everywhere-faq/>.

Electronics Policy

When we're not taking a poll through Poll Everywhere or doing another activity that involves using electronic devices, I ask that you keep these devices put away. Research has shown that students take better and more effective notes in longhand than when they type their notes on laptops. Laptop usage has also been shown to hinder the learning of both the student using the laptop as well as students sitting near the laptop user. Cell phones should be silenced and put away before class begins and should not be used for the duration of the class period, except for answering Poll Everywhere questions or in case of emergency.

Classroom Decorum

This class is an environment where students should feel free and safe to offer their own thoughts and feelings on the issues and topics we discuss. All viewpoints are welcome in this classroom, but comments meant to intimidate, ridicule, or dismiss the contributions of others will not be tolerated. I expect all students to behave courteously to one another and to refrain from offering rude and insensitive remarks.

Academic Dishonesty

Academic dishonesty means violating the standards of integrity all students pledge to adhere to as a condition of enrollment at UNC. Such dishonesty shall result in a failing grade on that assignment and will also result in a referral to the Honor Court. Students with questions about what qualifies as academic dishonesty should contact me and can also consult the Honor Court website at <http://honor.unc.edu/>.

Student Accessibility

Any student with a documented condition who needs to arrange reasonable accommodations should contact the instructor and Accessibility Resources (<https://accessibility.unc.edu/>). Accessibility Resources can be reached by phone at 919-962-8300 or by email at accessibility@unc.edu.

Schedule of Topics and Required Readings

Note: The readings listed below are subject to change. Depending on the pace of the class and the interests of the students, I might add, remove, or swap readings as the semester progresses. I will notify everyone in advance if and when such changes occur. **All readings not in the assigned texts will be available on our class Sakai site under the “Resources” tab, through the course reserves, or through the UNC Library.**

Part I: History and Judicial Process

This part of the class will focus on the history and judicial process of the U.S. Supreme Court. In this unit, we will examine how the Court has evolved from the “least dangerous branch” to a powerful institution capable of exerting great policy change in American society. We will then take a step by

step look at how the Supreme Court operates, beginning with judicial selection and ending with the opinion process.

August 21: Class Introduction

- Syllabus

August 23: Introduction to the Supreme Court I: Process

- Chapter 1 of *Supreme Court*, pages 1-20

August 28: Introduction to the Supreme Court II: Personnel of the Court (Justices, Law Clerks, Etc.)

- Chapter 3 of *Storm Center*, pages 130-154
- Read Justices' Biographies at <https://www.supremecourt.gov/about/biographies.aspx>
- Geneva Sands, "Meet the 9 Sitting Supreme Court Justices," article from *ABCNews.com*

August 30: The Evolution of the Supreme Court: John Marshall to Earl Warren

- Chapter 1 of *Supreme Court*, pages 20-23
- Watch "Supreme Court Stories: Marbury v. Madison." (I will provide a link for you to watch this video.)
- DeNeen L. Brown. "Removing a Slavery Defender's Statute: Roger B. Taney Wrote one of Supreme Court's Worst Rulings," article from *The Washington Post*
- Alex McBride. "Lochner v. New York," article from *PBS.org*

September 4: The Evolution of the Supreme Court: Earl Warren to John Roberts

- Chapter 1 of *Supreme Court*, pages 23-25
- Stephen L. Wasby. *The Supreme Court in the Federal Judicial System*, pages 11-28. ERES
- Jeffrey Toobin. *The Oath*, pages 47-57, 82-93, and 294-298. ERES

September 6: Selection of Justices: Vacancies and Nominations

- Chapter 2 of *Supreme Court*, pages 28-40 and 49-62
- Chapter 2 of *Storm Center*, pages 30-55
- Drew Desilver, "Long Supreme Vacancies Used to Be More Common," article from *Pew Research Center*

September 11: Selection of Justices: Confirmations

- Chapter 2 of *Supreme Court*, pages 40-49
- Chapter 2 of *Storm Center*, pages 55-84
- Leigh Ann Caldwell, "Neil Gorsuch Confirmed After Senate Uses 'Nuclear Option,'" article from *NBCNews.com*

September 13: Agenda Setting I

- Chapter 3 of *Supreme Court*, pages 83-88 and 95-99
- Chapter 4 of *Storm Center*, pages 155-160 and 163-190

September 18: Agenda Setting II

- Chapter 3 of *Supreme Court*, pages 88-95
- Chapter 4 of *Storm Center*, pages 190-235

September 20: Oral Arguments

- Chapter 5 of *Storm Center*, pages 236-247
- Chapter 4 of *Supreme Court*, pages 105-107
- Timothy R. Johnson, Paul J. Wahlbeck, and James F. Spriggs. 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *American Political Science Review* 100: 99-113. ERES.

September 25: Decision-Making on the Merits

- Chapter 4 of *Supreme Court*, pages 113-128.
- Chapter 5 of *Storm Center*, pages 247-257
- Tracey E. George and Lee Epstein. 1992. "On the Nature of Supreme Court Decision-Making." *American Political Science Review* 86: 323-337. Focus on theory rather than empirical methods

September 27: Models of Decision-Making

- Chapter 4 of *Supreme Court*, pages 128-144.
- Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*, pages 86-110. ERES
- Paper 1 due!

October 2: Supreme Court Oral Arguments Simulation

- Please read simulation materials posted on Sakai

October 4: Opinion Assignment

- Chapter 5 of *Storm Center*, pages 257-268
- Forrest Maltzman, James F. Spriggs II, and Paul J. Wahlbeck. *Crafting Law on the Supreme Court: The Collegial Game*. Chapter 2. ERES

October 9: Opinion Writing: Bargaining and Collegiality on the Court

- Chapter 5 of *Storm Center*, pages 268-298
- Chapter 4 of *Supreme Court*, pages 107-113

October 11: Midterm Exam

- Bring a scantron, bluebook, and pen

Part II: The Court in the American Political System

This part of class will consider the U.S. Supreme Court in the context of the American political system. Here, we will analyze the Court's relationship with external political actors, including Congress, the president, interest groups, and the public.

October 16: The Court and Public Opinion I

- Chapter 4 of *Supreme Court*, pages 136-139
- Chapter 6 of *Storm Center*, pages 325-331.
- Peter K. Enns and Patrick C. Wohlfarth. "Making Sense of the Supreme Court-Public Opinion Relationship," in *Routledge Handbook of Judicial Behavior*. ERES

October 18: Fall Break

- No Class!

October 23: The Court and Public Opinion II

- Finish readings from October 16

October 25: The Court and Organized Interests

- Chapter 3 of *Supreme Court*, pages 67-83.
- Jared Perkins and Paul M. Collins, Jr. "Interest Groups and the Judiciary," in *Oxford Handbook of Judicial Behavior*. ERES
- Gregory Caldeira and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82:1109-1127. Focus on theory rather than empirical methods. ERES

October 30: The Court, Congress, and the President

- Chapter 4 of *Supreme Court*, pages 141-144
- Chapter 6 of *Storm Center*, pages 348-356
- Tom S. Clarke. *The Limits of Judicial Independence*, pages 1-22. Available in electronic form through the UNC Library.
- Stephen Wermiel, "SCOTUS for law students: What does the Solicitor General do?" article from *SCOTUSBlog*

November 1: Implementing Court Decisions

- Chapter 6 of *Storm Center*, pages 309-325 and 341-348
- Chapter 6 of *Supreme Court*, pages 185-209

November 3: The Court's Policy Outputs and Their Impact

- Chapters 5 and 6 of *Supreme Court*, pages 152-180 and 209-219

Part III: Current Controversies

The third part of our class presents several high-profile issue areas that the Court has recently tackled. In this unit, we will delve deep into the Court's jurisprudence on abortion, campaign finance, and voting rights.

November 8: Abortion

- Chapter 1 of *Storm Center*
- A History of Key Abortion Rulings of the U.S. Supreme Court, article from Pew Research Center
- Lyle Denniston, "Opinion Analysis: Abortion Rights Reemerge Strongly," article from *Scotus-blog*

November 10: Campaign Finance

- Jeffrey Toobin, Money Unlimited, article from *The New Yorker*
- Chris Cillizza, How Citizens United changed politics, in 7 charts, article from *The Washington Post*
- Robert Barnes, "Supreme Court Strikes Down Limits on Federal Campaign Donations," article from *The Washington Post*

November 15: Voting Rights

- Jaime Fuller, "How Has Voting Changed Since *Shelby County v. Holder*?" article from *The Washington Post*
- John Schwartz, "Between the Lines of the Voting Rights Act Opinion," article from *The New York Times*
- Garrett Epps, "Will the Supreme Court Legitimize Partisan Gerrymandering," article from *The Atlantic*
- Amy Howe, "Court Stays Out of Merits on Partisan Gerrymandering, at Least for Now," article from *ScotusBLOG*

November 20: Voting Rights II

- Finish Readings from Wednesday!
- Listen to FiveThirtyEight Politics "The Gerrymandering Project: North Carolina"

November 22: Thanksgiving!

- No Class!

Part IV: The Court in the International Political System

Finally, our class will conclude with a brief look at the role of the Supreme Court in the international political system.

November 27: The Court and the International System

- Stephen Breyer. 2016. *The Court and the World: American Law and the New Global Realities*. Pages 249-270. ERES

November 29: The Court and the International System

- Stephen Breyer. 2016. *The Court and the World: American Law and the New Global Realities*. Pages 271-284. ERES
- Paper 2 due!

December 4: Final Exam Review!

- Bring Questions

December 8: Final Exam

- Bring a scantron, bluebook, and pen.