POS 335: The American Supreme Court
Fall 2013

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Office Hours: Tuesdays 9:00 – 10:00 am and by appointment

Course Description
This course will examine the role and function of the Supreme Court in American politics. Core topics include: the historical development of the institution; the nature and scope of judicial power; models of judicial decision-making; and the ability of the Supreme Court to generate political and social change. The course has three goals. First, the course will provide foundational knowledge about the essential mechanics of the United States Supreme Court and its role in the American political system. Second, the course will introduce students to competing theories in the field of public law about the nature of judicial decision making. Third, the course will aid students in the development of critical thinking skills by allowing them to analyze and discuss current events and problems using the theories and concepts discussed in class.

Learning Objectives
Upon successful completion of this course, students will be able to:
- Describe the “nuts and bolts” of the judicial process at the level of the US Supreme Court
- Explain the historical progression of the Court from the founding era through the present day
- Assess the strengths and weaknesses of competing theories of judicial decision-making
- Analyze and interpret judicial opinions
- Evaluate the Court’s impact on political and social change

Instructional Strategy
This course will be a team-based learning course in which students will work in teams during class to answer questions on quizzes and complete group assignments. Teams are assigned during the first week of class and are permanent throughout the semester. The philosophy behind team-based learning is that students learn best from actively engaging in small groups and applying knowledge to real world problems. Team-based learning will reduce the amount of passive lecturing in the classroom by the instructor and increase the amount of student-to-student engagement. Because team-based learning shifts significant responsibility for learning to students, all teams must arrive to class well prepared to apply their knowledge of the assigning readings.

If you are interested in learning more about team-based learning, you can visit the following website: http://www.teambasedlearning.org.

Course Format
The course will be taught twice a week during one hour and 20 minute blocks. In most instances, time will be divided into three sequential parts. For example, when readiness assessment tests are utilized, the class will be divided as follows. Part I (approximately the first 45 minutes to an hour of the class meeting) will focus on Individual and Team Readiness Assessment Tests. Part II will involve a brief lecture to clear up any confusion students still have about the readings. Finally, Part III (ensuring any remaining class time) will focus on the completion of a group assignment or a written appeal that requires students to apply the material learned from the readings. On days when readiness assessment
tests are not utilized, the majority of class time will be spent completing group assignments or set aside for lectures. The course itself is divided into four units which are outlined below in the course summary.

**Grading & Course Requirements**

Students’ final grades will be based on the following assignments:

1) Individual Readiness Assessment Tests (15%),
2) Team Readiness Assessment Tests (10%),
3) Final Peer Evaluation (10%),
4) Group Activities (20%),
5) Midterm Exam (20%), and
6) Final Examination (25%)

Each unit will follow a sequence known as the Readiness Assurance Process (RAP). This process allows you numerous opportunities to demonstrate your comprehension of the reading and the course concepts, both individually and as a team, while receiving immediate feedback on your progress. The RAP takes place in a sequence containing the following components:

1. **Readings**

At the start of each unit, you will complete a number of readings outside of class. These readings will contain the core concepts and ideas of that particular unit. While these will not be the only readings for each unit, they will provide you with a foundation that will be built upon with supplemental readings later on.

2. **Individual Readiness Assessment Test (I-RAT) and short paper assignment**

The first in-class activity of each unit is the I-RAT, based upon the assigned readings. These are in the form of a short quiz featuring multiple-choice questions focused on the key concepts and ideas of the readings. They are designed to maintain accountability for reading the assignments on time and to assess student comprehension of the material. The iRAT typically takes about 15 minutes to complete. There will be no makeup iRATs.

In addition to the I-RATs you will be graded individually for writing a short paper (1,200 words or less) in the second half of the semester. Additional instructions will be distributed in classes.

3. **Team Readiness Assessment Test (T-RAT)**

After finishing the I-RAT, you will take the same test as a team. You are allowed to discuss the questions as a team and decide on an answer for each question. You will know immediately how well you did on both of the RATs, receiving an individual and a team score. Individual scores will remain anonymous, but you will keep a record of overall team scores in order to help monitor your team’s performance over time.

4. **Appeals**

After the T-RATs are completed, students can appeal any question they missed on the team test. Students can earn credit for these questions by formulating a valid argument about their responses, the quality of the questions themselves, or inadequacies in the required readings. All appeals must be
submitted in writing. The process is “open book,” therefore, students are required to provide (and cite) direct evidence from the readings in support of their argument. Students may also use their notes. Appeals are due by the end of the class period in which the RATs were completed. Time will be provided at the end of each session for teams that wish to appeal.

If an appeal is successful, the points will be added to the team score as well as for any individual that answered the same way as the team. Any team members who had the question correct initially will continue to receive credit on the question. ONLY the members of a team that appeal will be eligible for a change in score, meaning each team must complete and submit a separate appeal. If an appeal is unsuccessful (or your team does not submit an appeal) you will not receive points for the question, regardless of whether or not other teams successfully appeal the question.

5. Applications

Most of the class meetings will involve short lectures and individual or team based activities that will allow you to apply the material learned from the readings. Participation is critical and many of these activities will be graded on a point scale (e.g., 10 points).

6. Mini-Lectures

You will learn most of the course material through readings and activities that you work on in teams. That being said, I will also provide mini-lectures throughout the semester that address any difficulties student continue to have with the material. Consequently, when you do the readings and complete groups assignments, please be on the lookout for any points that require further explanation. In addition, I will dedicate some class-meetings for longer “big picture” lectures to provide context to the individual activities and group work.

7. Peer Evaluation

One of the most significant concerns with working in a group and receiving team grades is that some of the members of the team may work harder than others or “free-ride” off of those willing to put in more effort. As such, you will be given multiple chances to evaluate your team members during the course of the semester. There will be an informal evaluation at the mid-term point, used as feedback for individual team members, and then a formal evaluation at the end of the course, which is worth 10% of your course grade. These evaluations are completely anonymous and are designed to minimize free riding in teams.

8. Examinations

Finally, there will be one in-class midterm examination and one in-class final examination. Both are cumulative. Both will consist of 40% short answer and 60% essay sections. Make-up exams are only available to students providing documentation signed by a doctor of an emergency medical situation (i.e., going to the dentist doesn’t count).

Course Policies

Attendance and Participation: At the college level, the expectation is that students will attend every class session and actively participate in class. Attendance is not the same as participation so keep that in mind.
**Cheating and Plagiarism:** Plagiarism is the intentional or unintentional use of another’s words or ideas without giving credit to that person. While this includes copying text word for word without the use of quotation marks, it also includes paraphrasing another person’s work without proper citation. Students caught plagiarizing will AT THE VERY LEAST receive a failing grade on the assignment. Make life easy—don’t plagiarize.

**Students with disabilities:** If you have a documented disability, or a language barrier inhibits you from actively participating, you must notify me within the first two weeks of the course in order to make suitable arrangements.

**Course Materials**
The course materials include two required texts. Both are available for purchase at the University at Albany Bookstore or online.


Additional reading materials will include Supreme Court cases, journal articles, and book excerpts. All are in the course packet available on Blackboard. Login information will be provided on the first day of classes.

**Course Schedule**

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<th>DATE</th>
<th>TOPIC</th>
<th>STUDENT ASSESSMENT</th>
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<tbody>
<tr>
<td>08/27/13</td>
<td>Introduction to TBL</td>
<td>Practice RAT</td>
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<tr>
<td>08/29/13</td>
<td>Class Canceled</td>
<td>None</td>
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<tr>
<td>09/03/13</td>
<td>Unit 1: Historical Overview</td>
<td>RAT #1</td>
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<tr>
<td>09/05/13</td>
<td>Classes Suspended (Rosh Hashanah)</td>
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<tr>
<td>09/26/13</td>
<td>Unit 2: Reaching the Court – Justices and Cases</td>
<td>RAT #2</td>
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<td>10/10/13</td>
<td>Peer Evaluation Midterm Review</td>
<td>Peer Evaluation Discussion Questions</td>
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<tr>
<td>10/15/13</td>
<td>Unit 1 &amp; Unit 2</td>
<td>Comprehensive Midterm Examination</td>
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<td>10/17/13</td>
<td>Unit 3: Judicial Decision-Making</td>
<td>RAT #3</td>
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<tr>
<td>11/5/13</td>
<td>Decision-Making on the Contemporary Court</td>
<td>Short Paper Assignment</td>
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<td>11/14/13</td>
<td>Unit 4: Judicial Impact</td>
<td>RAT #4</td>
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<td>11/26/13</td>
<td>Law and Social Change</td>
<td>Group Presentations</td>
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<td>11/28/13</td>
<td>Classes Suspended (Thanksgiving)</td>
<td>None</td>
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<tr>
<td>12/5/13</td>
<td>Peer Evaluation Final Review</td>
<td>Peer Evaluation Discussion Questions</td>
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<tr>
<td>12/10/13</td>
<td>Unit 1 – Unit 4</td>
<td>Comprehensive Final Examination Discussion Questions</td>
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**Tuesday August 27th**: Syllabus distribution & Introduction to Team-Based Learning

This class will be devoted to an overview of the class and course mechanics. By the end of this informational class, you should be able to determine if it suits your needs and interests.

**Assessments & Assignments Due**
- Practice RAT

**Required Readings**
- Course Syllabus

**Thursday August 29th**: Class Canceled (APSA Conference)

**UNIT 1: History of the United States Supreme Court**

**Tuesday September 3rd**: Establishing the Power of Judicial Review

**Assessments & Assignments**
- RAT #1

**Required Readings**
- *Federalist No. 78 (course packet)*
- *Article III (course packet)*
- McCloskey Chapters 1-4 (66 pp.)
- *Marbury v. Madison (course packet)*

**Thursday September 5th**: Class Suspended (Rosh Hashanah)

**Tuesday September 10/Thursday September 12th**: Judicial Sovereignty and the Triumph of Judicial Constitution-Making?

**Assessments and Assignments:**
- None

**Required Readings**
- McCloskey Chapters 5-6 (53 p.)
- Whittington: The Political Foundations of Judicial Supremacy (Chapter 1)(27 pp.)

**Tuesday September 17th**: The Rise of the Supreme Court’s Civil Rights Agenda

**Assessment, Assignments and Activities**
- None

**Required Readings**
- McCloskey Chapter 7-8 (85 pp. SKIM CHAPTER 8)
- Racial Discrimination:

**Thursday September 19th**: Gender Discrimination

**Assessment, Assignments and Activities**
- None

**Required Readings (continued on next page)**
- Gender Discrimination:
  - *Reed v. Reed (1971)*
Craig v. Boren (1976)

Tuesday September 24th: Freedom of Religion and the Establishment Clause
Assessments and Assignments:
- None

Required Readings
- Everson v. Board of Education (1947)
- Lemon v. Kurtzman (1971)
- Lee v. Weisman (1992)

UNIT 2: Reaching the United States Supreme Court: Justices and Cases

Thursday September 26th: Getting on the US Supreme Court
Assessments and Assignments:
- RAT #2

Required Readings
- SCAMR Chapter 5 Staffing the Court (45 pp.)
- David Stras “The New Politics of Judicial Appointments” (61 pp.)

Tuesday October 1st/Thursday October 3rd: Judicial Appointments Continued
Assessments and Assignments:
- None

Required Readings
- Judicial Bios:
  - Sri Srinivasan, Circuit Judge of the U.S. Court of Appeals for the DC Circuit
  - Jacqueline Nguyen, Circuit Court Judge of the U.S. Court of Appeals for the 9th Circuit
  - Paul Watford, Circuit Judge of the U.S. Court of Appeals for the 9th Circuit
  - Kamala Harris, California Attorney General

Tuesday October 8th: Getting to the US Supreme Court
Assessments and Assignments:
- None

Required Readings:
- SCAMR Chapter 6 Getting Into Court (56 pp.)
- Perry Deciding to Decide (Chapter 8): Cert Worthiness (56 pp.)

Thursday October 10th: Peer Evaluations/Review for the Midterm
Assessments and Assignments:
- Peer Evaluation
- Discussion Questions—part of class time will be dedicated to a review for the midterm. All students must come prepared with a minimum of two discussion questions. These questions may be substantive or critical. While substantive questions are designed to gain clarity about one or more of the readings, critical questions aim to challenge the viewpoint of a specific author. Critical questions are useful for generating productive discussions.

Required Readings:
- Review Units 1 & 2
Tuesday October 15th: Midterm Examination
Assessments and Assignments:
- Midterm Examination
Required Readings:
- None

UNIT 3: Judicial Decision-Making (JDM)

Thursday October 17th: Introduction to the three models of decision-making
Assessments and Assignments:
- RAT #3
Required Readings
- SCAMR (Chapter 2): Models of Decision-Making: The Legal Model (42 pp.)
- SCAMR (Chapter 3): Models of Decision-Making: The Attitudinal Model (86-97 only; 11 pp.)
- Epstein and Knight (Chapter 1): A Strategic Account of Judicial Decisions (18 pp.)
- Maltzman, Spriggs & Wahlbeck (Introduction): Crafting Law on the Supreme Court (28 pp.)

Tuesday October 22nd/Thursday October 24th: The Legal Model
Assessments and Assignments:
- None
Required Readings
- Briefing Judicial Opinions
Case Study: Abortion (required)
- Roe v. Wade (1973)
- Planned Parenthood v. Casey (1992)
- Oklahoma Coalition for Reproductive Justice v. Cline (2012)
- Denniston “New Test on Abortion Rights”

Tuesday October 29th/Thursday October 31st: The Attitudinal Model and its Critics
Assessments and Assignments:
- None
Required Readings
- Brisbin “Slaying the Dragon”

Tuesday November 5th: Strategic Model
Assessments and Assignments:
- Short Paper Assignment Due
Required Readings
Case Study: Same-Sex Marriage
- Review Epstein and Knight/Maltzman, Spriggs, and Wahlbeck
- United States v. Windsor (majority opinion only)
- PEW Research Center “Public Divided Over Same-Sex Marriage Rulings

Thursday November 7th: Historical Institutionalism
Assessments and Assignments:
- None
Required Readings
- Smith “Historical Institutionalism and the Study of Law” (14 pp.)
- Gillman: “The Court as an Idea, Not a Building (or a Game)” (22 pp.)

Tuesday November 12th: Wartime Powers in historical context
Assessments and Assignments:
- None
Required Readings
- Roosevelt v. Meyer (1863)
- Ex Parte Milligan (1866)
- Ex Parte McCardle (1868)
- Mark Graber “Legal, Strategic or Legal Strategy: Deciding to Decide during the Civil War and Reconstruction” (35 pp.)

UNIT 4: Judicial Impact

Thursday November 14th: Judicial Impact
Assessments and Assignments:
- RAT #4
Required Readings
- Rosenberg “The Dynamic and the Constrained Court View” (28 pp.)
- Rosenberg “Positivism, Interpretivism, and the Study of Law”
- McCann “Causal Versus Constitutive Explanations (or, On the Difficulty of Being so Positive)”

Tuesday November 19th/Thursday November 21st:
Assessments, Assignment and Activities:
- None
Required Readings
- Rosenberg “Confusing Rights with Reality” (65 pp.)

Tuesday November 26th:
Assessments and Assignments:
- Group Presentations
Required Readings
- None

Thursday November 28th: Classes Suspended (Thanksgiving Break):

Tuesday December 3rd: Cause Lawyers
Assessments and Assignments:
- None
Required Readings
- McCann and Dudas “Retrenchment . . . and Resurgence?”
- Anna-Maria Marshall “Social Movement strategies and the Participatory Potential of Litigation”
Thursday December 5th: Peer Evaluations/Review for Final
Assessments and Assignments:
- Peer Evaluation
- Discussion Questions—part of class time will be dedicated to a review for the final. All students must come prepared with a minimum of two discussion questions. These questions may be substantive or critical. While substantive questions are designed to gain clarity about one or more of the readings, critical questions aim to challenge the viewpoint of a specific author. Critical questions are useful for generating productive discussions.

Required Readings
- Review for the final examination

Tuesday December 10th: Final Examination
Assessments and Assignments:
- Final Examination
Required Readings
- None