

# Law and Politics

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office hours: MW 11:30–12:30 (Main 324B)

## DESCRIPTION

This course offers an introduction to law and politics. Our core goal is to develop a sophisticated understanding of contemporary and enduring debates at the intersection of law and politics with a particular emphasis on the U.S. Supreme Court. Fundamental questions of interest include: How do judicial institutions evolve? What characteristics should judges possess and how should institutions be designed to select on these characteristics? How do judges make decisions? How should legal texts be interpreted? To what extent are courts constrained by legislatures and executives in systems of separated powers? And can we justify the exercise of judicial review by unelected courts in a republican government? Analytically, we tie these seemingly disparate threads together by grounding our discussion in the logic of institution design. Doing so facilitates a systematic consideration of the positive and normative aspects of debates concerning law and politics and enables intelligent downstream engagement with new controversies.

## GRADING

The following components comprise the course grade:

- First Exam (35%) [10/02]
- Second Exam (35%) [11/13]
- Research Paper (20%) [12/02]
- Presentation (10%) [11/18–12/06]

Final grades are distributed according to the following scale:

A	93–100	B	83–86	C	73–76	D	63–66
A-	90–92	B-	80–82	C-	70–72	D-	60–62
B+	87–89	C+	77–79	D+	67–69	F	59–0

## READING

Assigned readings are hyperlinked below. Access is available through university subscriptions. There are three options for viewing and downloading readings listed in declining order of simplicity: (1) if on campus click the hyperlink while using a university IP address; (2) if off campus click the hyperlink after connecting to the university's [VPN](#); or (3) if off campus search for the article through the library's [webpage](#) using the included journal and citation information. Readings supplement rather than duplicate lectures. As a result, particular readings may be discussed little if at all during class. But lack of class attention should not be considered a signal of unimportance as readings are nonetheless essential for developing a comprehensive understanding of the material. Moreover, readings are fair game on exams. Coverage dates are tentative. Although we may be slightly ahead or behind the schedule at any given point due to variation in class comprehension and discussion, adhering to it is encouraged as convergence occurs with time.

## TOPICS

### 1. Analytical Foundations [08/26–08/30]

- Douglas C. North. 1991. [Institutions](#). *Journal of Economic Perspectives* 5(1): 97–112.
- John W. Patty and Elizabeth Maggie Penn. 2015. [Aggregation, Evaluation, and Social Choice Theory](#). *The Good Society* 24(1): 49–72.

### 2. Institutional Development [09/02–09/06]

- William H. Rehnquist. 1988. [The Supreme Court: The First Hundred Years Were the Hardest](#). *University of Miami Law Review* 42(3): 475–490.
- Justin Crowe. 2007. [The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft](#). *Journal of Politics* 69(1): 73–87.

### 3. Selecting Judges [09/09–09/13]

- Lawrence B. Solum. 2005. [A Tournament of Virtue](#). *Florida State University Law Review* 32(4): 1365–1400.
- Paul M. Collins and Lori A. Ringhand. 2016. [The Institutionalization of Supreme Court Confirmation Hearings](#). *Law & Social Inquiry* 41(1): 126–151.

### 4. Accountability and Independence [09/16–09/20]

- Pamela S. Karlan. 1999. [Two Concepts of Judicial Independence](#). *Southern California Law Review* 72: 535–558.
- Mariah Zeisberg. 2009. [Should We Elect the U.S. Supreme Court?](#) *Perspectives on Politics* 7(4): 785–803.

### 5. Agenda Setting [09/23–09/27]

- David M. O’Brien. 1997. [Join-3 Votes, the Rule of Four, the Cert. Pool, and the Supreme Court’s Shrinking Plenary Docket](#). *Journal of Law & Politics* 13(4): 779–808.
- William Baude. 2015. [The Supreme Court’s Shadow Docket](#). *New York University Journal of Law & Liberty* 9(1): 1–48.

### 6. Deciding the Merits [09/30–10/04]

- Andrew D. Martin, Kevin M. Quinn, Theodore W. Ruger, and Pauline Kim. 2004. [Competing Approaches to Predicting Supreme Court Decision Making](#). *Perspectives on Politics* 2(4): 761–767.
- Lee Epstein and Jack Knight. 2013. [Reconsidering Judicial Preferences](#). *Annual Review of Political Science* 16: 11–31.

### 7. Opinions and Reasons [10/07–10/11]

- Pamela C. Corley. 2007. [Bargaining and Accommodation on the United States Supreme Court](#). *Judicature* 90(4): 157–165.

- Madelyn Fife, Greg Goelzhauser, Kaylee B. Hodgson, and Nicole Vouvalis. 2017. [Concurring and Dissenting without Opinion](#). *Journal of Supreme Court History* 42(2): 171–192.
8. Judicial Review [10/14–10/18]
- Mary Sarah Bilder. 2008. [Idea or Practice: A Brief Historiography of Judicial Review](#). *Journal of Policy History* 20(1): 6–25.
  - Keith E. Whittington. 2005. [Interpose Your Friendly Hand: Political Supports for the Exercise of Judicial Review by the United States Supreme Court](#). *American Political Science Review* 99(4): 583–596.
9. Constitutional Interpretation [10/21–10/25]
- Antonin Scalia. 1989. [Originalism: The Lesser Evil](#). *Cincinnati Law Review* 57(3): 849–866.
  - Stephen Breyer. 2002. [Our Democratic Constitution](#). *New York University Law Review* 77(2): 245–272.
10. Checking Courts [10/28–11/01]
- Adrian Vermeule. 2006. [Political Constraints on Supreme Court Reform](#). *Minnesota Law Review* 90(5): 1154–1172.
  - Tara Leigh Grove. 2015. [Article III in the Political Branches](#). *North Dame Law Review* 90(5): 1835–1866.
11. Activism and Restraint [11/04–11/08]
- Keenan D. Kmiec. 2004. [The Origin and Current Meanings of Judicial Activism](#). *California Law Review* 92(5): 1441–1478.
  - Frank B. Cross and Stefanie A. Lindquist. 2007. [The Scientific Study of Judicial Activism](#). *Minnesota Law Review* 91(6): 1752–1784.

## PAPER

The research paper analyses a federal court reform. The proposed reform can be in the form of a constitutional amendment (e.g., electing federal judges), statute (e.g., changing the number of justices), or norm (e.g., discretionary agenda setting by lottery) depending on the source of the status quo policy. Proposals must be approved by me in advance and no two students may choose the same topic. The paper should include three labeled substantive sections: an introduction describing the status quo policy and text of the proposed reform (not to exceed one page), an analytical section detailing at least two points each for and against the reform, and a conclusion summarizing the most important points (not to exceed one page). Arguments should be explicitly grounded in the logic of institutional design developed throughout the course. Examples of potentially pertinent themes include incentive structuring, bargaining, preference aggregation, preference alignment, and hierarchical compliance, though applicable frameworks depend on policy choice.

Paper grades are primarily based on analytical thoroughness and quality. Engagement with the literature—including sources that do not appear on the syllabus—is expected. Borrowed material

should be attributed and in-text references should be appended in a separate section at the end of the paper. Citations and references should be consistent and thorough but there is no required format. Example citation and referencing formats include the [American Political Science Association Style Manual](#) and the [Chicago Manual of Style](#). Endnotes rather than footnotes should be used if applicable, including for ancillary discussion or note-based citation and referencing formats. In addition to the requirements listed above, paper grades are based in part on editing quality and adherence to the following: 5–7 paginated double-spaced pages of text with no extra space between paragraphs, 12-point Times New Roman font, 1-inch margins, and a title page with your name and course information. The 5–7 page text requirement does not include the title page, references, and notes. We will spend time discussing topic choice, analysis, and paper writing in class.

## PRESENTATION

Paper analyses are presented orally. The presentation should be 3–5 minutes with audience questions. Slide use is optional. Grades are based primarily on analytical clarity and thoroughness. Other factors include staying within the allotted time and answer quality.

## POLICIES

Applicable [university policies](#) are followed. These include, but are not limited to, policies on matters such as [excused absences](#), [classroom conduct](#), [academic integrity](#), and [disability-related accommodation](#). Students are bound by university policies regardless of prior knowledge or understanding. As a result, it is good practice to periodically review these policies.

Although the university’s policy on [excused absences](#) addresses numerous contingencies, it delegates faculty discretion with respect to several matters. As a result, the following gap-filling policies are adopted pursuant to university regulations. First, excused absences are generally limited to the mandatory and “other allowable” reasons delineated by university policy. There is a presumption against the grant of excused absences for other reasons, though exceptions may be considered on a case by case basis. Second, appropriate independent documentation must generally be provided for any excused absence. If documentation cannot be provided for good reason, other verification may be required. I reserve the right to determine what constitutes acceptable documentation or verification for purposes of classifying an absence as excused subject to applicable university policy. Third, without an excused absence, make-up exams can be taken and late papers submitted within twenty-four hours of the original deadline with a 20% reduction in grade for that course component. Time is tolled on non-business days, including weekends and university holidays. Missed simulations cannot be made up without an excused absence.

The syllabus is subject to change.

## RESOURCES

A nonexhaustive list of university resources for students:

- [Academic Success Center](#) (studying, test taking, and stress management)
- [Allies on Campus](#) (LGBTQA+ support training)
- [Counseling and Psychological Services](#) (mental health)

- [Disability Resource Center](#) (course accommodations, consultation, grievances)
- [Inclusion Center](#) (LGBTQA+, multicultural, and nontraditional student resources)
- [Public Safety](#) (campus police)
- [SAAVI Office](#) (advocates for sexual assault and stalking victims)
- [Sexual Misconduct](#) (reporting, advocates, counseling, medical attention, preserving evidence)
- [Student Nutrition Access Center](#) (groceries)
- [Student Support Services](#) (services for low income, first generation, and disabled students)
- [Student Wellness](#) (mental, physical, relationship, supporting others in distress)
- [Title IX and Nondiscrimination](#) (sexual misconduct and differential treatment)
- [Veterans Resource Office](#) (transition support, financial resources, mentoring)
- [Upstanding](#) (bystander intervention against sexual violence and other interpersonal harm)
- [Writing Center](#) (tutoring)