

PLSC 271/865: Policymaking Under Separation of Powers

Spring 2022

Yale University

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Office: Rosenkranz Hall, 115 Prospect St., Room 207

Monday, 1:30-3:20pm

Location: Rosenkranz Hall 202

Course website: [canvas](#)

Office Hours: Monday 3:30-4:45pm or
by appointment.

Please sign up via [Calendly](#)

Course Description

The topic of this seminar is the separation of powers, one of the pillars of the American political system. Specifically, we will be examining constraints on the powers of American political institutions, the political conflict that results from those constraints, and how actors are able to engage in policymaking given this conflict. Politics plays an important role in your lives, no matter your level of civil engagement. Our political system produces policies aimed at solving larger collective problems which will, ultimately, shape your individual social and economic experiences as well. This course is designed to teach you about policymaking under the American separation-of-powers system and how to approach the study of American politics thoughtfully and critically. We will explore a wide range of questions relating to the separation-of-powers system. Examples include: the role of the veto in legislative-executive bargaining; whether divided government reduces legislative productivity; how much discretion members of Congress decide to give bureaucracies; the use of presidential signing statements to influence the implementation of particular laws; and whether Supreme Court justices are constrained by the elected branches when they make decisions.

This seminar provides an overview of the literature on the politics of separation of powers, with an eye toward understanding how the various interbranch constraints on American political institutions impact the development and implementation of the policies that affect our lives. Critically, this course is also designed to advance your understanding of the practice of political science. Throughout our discussions, we will consider how scholars conduct their study of policymaking by American political institutions – highlighting their questions and the tools and approaches they employ to answer those questions.

Prerequisites

You should have taken an introductory Political Science course, American politics or Comparative politics being preferable, but not necessary. Since we will be reading published academic articles that make extensive use of quantitative methods and formal theory (e.g. game theory) research methods and/or game theory courses are a plus, BUT definitely not necessary to take this course.

Required Course Materials

- All reading material will be made available on **canvas**.

Course Requirements

Your grade will be determined by your performance on the following:

Seminar Participation (10%): Participation in seminar is key for your success in this class. There are many ways to maintain your participation grade – attendance is only one. You should be prepared to contribute meaningfully by asking questions and actively engaging in discussions. Attending class and being prepared by having read the assigned material will ensure that you are best able to fully participate in section.

Class discussion leader (10%): Students will be tasked with leading class discussions during the course. The number of times you will need to lead class discussions depends on enrollment, but you will not be required to lead more than twice. (Hint: It's a good idea to write response papers on the weeks you lead discussion.)

Reading Response Papers (25%): Over the course of the semester, undergraduate students are required to write 5 short reading responses, no more than two double-spaced pages. The purpose of these assignments is to encourage you to both read and think about the readings. Additionally, these exercises are meant to facilitate topical discussions, so the response should not just be a summary. Rather, your response should critically evaluate some aspect of the reading(s), for example:

- Does the author's theory make sense?
- Is the author's evidence convincing?
- Are the author's assumptions reasonable?
- Are the author's conclusions justified?
- What questions remain unanswered?
- How does this reading complement or complicate another from this week or previous weeks?

You are welcome to discuss the readings with your fellow students before writing your responses. However, all written work must be yours alone. You may choose when to write a response, but you must complete at least 3 before Spring Break. **They are due Sunday, the day before class, at 5 p.m.** (Graduate students will write 8 response papers instead of 5.)

Analytical Paper (20%) You are required to write a 5-7 page paper **due March 18 at 5 p.m.** In this paper, you will critically evaluate a news story, news analysis, or op-ed that makes a claim about whether and/or how one political institution (e.g. Congress) limits the ability of another institution (e.g. the president) to achieve specific policy priorities, using material from the course and additional sources. I will give you more information about this assignment as it approaches.

Final Exam (35%): The final exam will be a take-home, open-book essay exam where you will write two essays from a set of 4 or 5 prompts related to course material. Prompts will be distributed prior to the last class meeting and essays are due by the end of finals period.

Graduate students enrolled in the course will write either a research design or analytical literature review. Research designs identify a research question related to the course material, summarize the relevant literature, and lays out a theory (original or from previous work) and empirical design (if applicable). Analytical literature reviews identify a question relating to the separation-of-powers system and summarize the relevant literature systematically. More detailed guidance will come from talking with me.

General Expectations

Learning is most effective when the classroom is comfortable, challenging, and fun. A key part of the academic environment is participating in the frank and civil exchange of ideas in an environment where people disagree but nonetheless treat one another with respect. As such, we – as a group – must cultivate mutual respect for ideas, freedom/ability to speak in class, and a professional tone. I will, consequently, not tolerate any form of disrespect geared towards me or another in class, dishonesty or disruptive activity. Spirited engagement and exciting disagreement, however, are encouraged.

My office, office hours and email are at the top of the syllabus. The best way to contact me is to come to office hours where we can discuss questions about the material, assignments, or your experience in class. Please sign up for time slots during office hours (or for an appointment outside of office hours) via [Calendly](#). As for email, please include “PLSC X” in the subject line of the email. Generally, I will respond to e-mails within 48 hours. I cannot guarantee a response during the weekend; any e-mails received after 5pm on Friday will be answered the following Monday.

Academic Integrity

Plagiarism is unacceptable, corrupts your personal integrity, and ultimately stunts your intellectual growth. Academic integrity is a core university value and the University expects that students will conduct themselves in an honest and ethical manner and respect the intellectual

work of others. Academic dishonesty is not tolerated at Yale (see the Yale College Undergraduate Regulations [here](#)) and there are resources to help you maintain your academic honesty, including the Yale Writing Center (find more details on their [website](#)). When in doubt, cite your sources and trust your own brain - don't cheat.

Students with Disabilities

Your experience in this class is important to me. I am happy to accommodate students with disabilities and requests go through the Yale University Resource Office on Disabilities. If you have already established accommodations with the ROD, please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course. If you feel you need accommodation please contact the [Resource Office on Disabilities](#).

Course Schedule

Week 1. Background (Virtual - Zoom link in announcement)

January 28:

Unusual class time - only Friday meeting for first meeting.

- Orren, Karen and Stephen Skowronek. 2017. *The Policy State: An American Predicament*. Ch. 1 and 5.
- Epstein, David and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. Cambridge University Press. Chs. 1 and 2.

Week 2. Presidential Policymaking with Congress (Virtual - Zoom link in announcement)

January 31:

- Beckmann, Matthew N. 2010. *Pushing the Agenda: Presidential Leadership in U.S. Lawmaking*. Ch 1 and 5.
- Canes-Wrone, Brandice. 2005. *Who Leads Whom? Presidents, Policy, and the Public*. University of Chicago Press, Ch 2.
- McCarty, Nolan and Keith Poole. 1995. "Veto Power and Legislation: An Empirical Analysis of Executive-Legislative Bargaining from 1961-1986." *Journal of Law, Economics, Organization*.
- Cameron, Charles. 2000. *Veto Bargaining: The Politics of Negative Power*. Ch 1 and 7.

Week 3. Presidential Policymaking without (or in spite of) Congress

February 7:

- Lowande, Kenneth and Jon C. Rogowski. 2021. "Presidential Unilateral Power." *Annual Review of Political Science*.
- Howell, William. 2003. *Power Without Persuasion*. Ch 3.

- Chiou, Fang-Yi and Lawrence S. Rothenberg. 2017. *The Enigma of Presidential Power: Parties, Policies and Strategic Uses of Unilateral Action*. Ch 1.
- Ostrander, Ian, and Joel Sievert. 2014. "Presidential signing statements and the durability of the law." *Congress & the Presidency*.

Week 4. Presidential Policymaking Power with the Bureaucracy I - (Political Control through Appointments)

February 14:

- McCarty, Nolan M. and Rose Razaghian. 1999. "Advice and Consent: Senate Response to Executive Branch Nominations, 1885-1996." *American Journal of Political Science*.
- Lewis, David. 2008. *The Politics of Presidential Appointments*. Ch 2 and 6.
- Kinane, Christina M. 2021. "Control without Confirmation: The Politics of Vacancies in Presidential Appointments." *American Political Science Review*
- Warren, Patrick L. 2010. "Allies and adversaries: appointees and policymaking under separation of powers." *The Journal of Law, Economics, and Organization*.

Week 5. Presidential Policymaking Power with the Bureaucracy II (Agenda, Capacity, and Rulemaking)

February 21:

- Bolton, Alexander, Rachel Augustine Potter, and Sharece Thrower. 2016. "Organizational Capacity, Regulatory Review, and the Limits of Political Control," *Journal of Law, Economics, and Organization*.
- Canes-Wrone, Brandice. 2009. "Administrative Politics and the Public Presidency," *Presidential Studies Quarterly*.
- Yackee, Susan Webb. 2019. "The politics of Rulemaking in the United States." *Annual Review of Political Science*

Week 6. Congressional Policymaking with the Bureaucracy I (Political Control and Delegation)

February 28:

- Huber, John D. and Charles R. Shipan. 2002. *Deliberate Discretion*. Cambridge University Press. Chs. 1 and 2.
- Bawn, Kathleen. 1995. "Political Control versus Expertise: Congressional Choices about Administrative Procedures." *American Political Science Review*.
- Volden, Craig. 2002. "A formal model of the politics of delegation in a separation of powers system." *American Journal of Political Science*.

Week 7. Congressional Policymaking with the Bureaucracy II (Political Control through Capacity, Oversight, and Accountability)

March 7:

- McCubbins, Mathew and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrol Versus Fire Alarm," *American Journal of Political Science*.
- Huber, John D. and Nolan McCarty. 2004. "Bureaucratic Capacity, Delegation, and Political Reform." *American Political Science Review*.
- Feinstein, Brian D. 2017. "Designing Executive Agencies for Congressional Influence." *Administrative Law Review*.
- Ritchie, Melinda and Hye Young You. 2019. "Legislators as Lobbyists." *Legislative Studies Quarterly*.

Week 8. Policymaking under Separation of Powers - Congress and the Executive Branch

March 14:

- Clinton, Joshua D., et al. 2012. "Separated powers in the United States: The ideology of agencies, presidents, and congress." *American Journal of Political Science*.
- Potter, Rachel Augustine, and Charles R. Shipan. 2017. "Agency rulemaking in a separation of powers system." *Journal of Public Policy*.
- Bolton, Alexander and Sharece Thrower. 2021. *Checks in the Balance: Legislative Capacity and the Dynamics of Executive Power*. Chs 1, 2, and 6.

March 18 - Analytical Paper Due 5pm.

March 18-28 - Spring Recess (no class)

Week 9. Congress and Judicial Policymaking I

March 28:

- Clark, Tom. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy," *American Journal of Political Science*.
- Martin, Andrew D. 2001. "Congressional decision making and the separation of powers." *American Political Science Review*.
- Harvey, Anna, and Barry Friedman. 2009. "Ducking Trouble: Congressionally Induced Selection Bias in the Supreme Court's Agenda." *Journal of Politics*.

Week 10. Congress and Judicial Policymaking II**April 4:**

- Segal, Jeffrey A., Chad Westerland, and Stefanie A. Lindquist. 2011. "Congress, the Supreme Court, and judicial review: Testing a constitutional separation of powers model." *American Journal of Political Science*.
- Barnes, Jeb. 2004. "Adversarial Legalism, the Rise of Judicial Policymaking, and the Separation-of-Powers Doctrine." in *Making Policy, Making Law: An Interbranch Perspective* eds. Mark C. Miller and Jeb Barnes.
- Whittington, Keith. 2005. "Interpose Your Friendly Hand: Political Supports for the Exercise of Judicial Review by the United States Supreme Court." *American Political Science Review*.

Week 11. Judicial Review and the Executive Branch**April 11:**

- Gailmard, Sean and John W. Patty. 2017. "Participation, Process, Policy: The Informational Value of Politicized Judicial Review" *Journal of Public Policy. American Political Science Review*.
- McCann, Pamela J. Clouser, Charles R. Shipan, and Yuhua Wang. 2021. "Measuring the Legislative Design of Judicial Review of Agency Actions." *Journal of Law, Economics, and Organization*.
- Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences of Politicization in the Solicitor General's Office." *Journal of Politics*.

Week 12. Political Control of the Courts - Judicial Appointments**April 18:**

- Moraski, Bryon J., and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science*.
- Lee Epstein et al. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees," *Journal of Politics*.
- Black, Ryan C., and Ryan J. Owens. 2016. "Courting the president: how circuit court judges alter their behavior for promotion to the Supreme Court." *American Journal of Political Science*.
- Harris, Allison P. and Maya Sen. 2019. "Bias and Judging." *Annual Review of Political Science*.

Week 13. Policymaking under Separation of Powers**April 25:**

- Farhang, Sean. 2008. "Public Regulation and Private Lawsuits in the American Separation of Powers System." *American Journal of Political Science*.

- Owens, Ryan J. 2010. "The Separation of Powers and Supreme Court Agenda Setting." *American Journal of Political Science*.
- Acs, Alex. 2019. "Congress and Administrative Policymaking: Identifying Congressional Veto Power." *American Journal of Political Science*.

FINAL EXAM DETAILS: May 11th, 5pm - Final Exam Due!