

Lesson Plan, Government 97 (Spring 2014), Week 4
Shelby Grossman

[I did not come close to getting through this entire lesson plan in two hours.]

Let's situate this week

Why democracy?

Democracy ancient and modern

How democratic are elections?

This week is on democracy, rights and courts

Next week how democratic is the US?

I think one way to say what we have been doing thus far is explore institutions associated with democracy across time and space, and then problematize these institutions.

This week we are problematizing courts.

I'll return papers by section next week.

Waldron

Case Against Judicial Review (of legislation***)

What is his main argument?

- What is judicial review?

Let's list out his critiques of judicial review:

Which of these are process critiques, and which are instrumental/outcome critiques?

Which type of critique should we care about more? Process critiques or outcome critiques?

Who cares about process critiques if the outcomes are great?

Which of these arguments do you find most and least persuasive, and why?

Should we have legislative review?

What are some counter-arguments to this, either that he lays out or that you can just think of?

- legislatures are not having pure value-oriented debates
- judges are appointed by elected officials
- tyranny of majority is real, but only when topical minority is aligned with decisional minority

Do courts threaten or reinforce democracy?

Bickel

The Counter Majoritarian difficulty

Main point?

What is meant by counter majoritarian? [Credit to Brad Hinshelwood for parts of this section]

- ^ judicial review as undemocratic because it thwarts the will of legislators who represent the people
 - a. The counter-majoritarian difficulty
 - i. Does it really exist? (Dahl, through Greenhouse)
 - 1. Ability of courts to be counter-majoritarian may be quite limited (Bickel; Waldron)
 - 2. However, appear capable at times—Brown the classic example
 - ii. Did the founders want the courts to be countermajoritarian?
 - 1. Ability to be countermajoritarian part of the justification for life tenure and salary protection for judges

If it's counter-majoritarian, Why does Bickel think it's justifiable?

How does this relate to Prof. Feldman's depiction of the types of ruling the SC makes?

What do you think of this argument?

What is meant by inter-temporal issues?

Bickel offers some critiques of judicial review. What are they?

Is the supreme court counter-majoritarian (Bickel)? Or a reflection of current public opinion (Dahl, through Greenhouse)? [Credit to Brad Hinshelwood]

Video

When we, as ordinary citizens, debate issues like abortion and gay marriage, what types of arguments do people make?

Half of you right down the things we debate you are talking to your friend about abortion.

Half do gay marriage.

First video is from supreme court hearings on whether proposition 8 in California is constitution, bans gay marriage. It's between justice scalia and the guy who is arguing against proposition 8.

Show video of judicial confirmation where nominees are obfuscating, not having debates that mirror ours

0:00 to 2:00

<http://www.youtube.com/watch?v=VXVn78i3lmE>

Theodore Olson and Justice Scalia on gay marriage - Supreme Court debate

0:26 to 3:13

http://www.youtube.com/watch?v=PNF_pwkP6gg

Roberts confirmation hearing clip

Second video is from now justice john robert's confirmation hearings

Did you hear any similarities between the things you listed?

What types of things are being debated here?

Is this what should be debated? Is this desirable?

Federalist paper #78: The Judiciary Department

They expect the judiciary to be the weakest branch. Is this true today? How do we measure influence?

“... the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the 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... 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 even for the efficacy of its judgments.”

Was Hamilton right looking centuries forward? Did we have nothing to fear from judicial review?

Bill of Rights

Taking a step back, when we talk about Supreme Court protection of rights, we're talking about the Bill of Rights. This was assigned this week.

We've been talking about whether judicial review is democratic, but a prior topic is what are these rights?

So what are some of these rights?

What are some patterns in these rights?

What rights are not included?

The scope of rights are quite narrow. More recently created constitutions include economic and social rights, eg South Africa (I handed out excerpts from the South African bill of rights, which includes right to health care, etc.)

What does Waldron say, or what do you think are some of the reasons the bill of rights doesn't include these economic/social rights?

Should they?

Supreme court by lot?

Write down every justification you can think of for Supreme Court Justices by lottery. (I didn't have time to do this, but I expected all students would be against the idea of having justices selected by lottery, so I was going to have them try to take the other position.)

Main point was to problematize the Supreme Court, and think about in what ways it is un/democratic, in what ways it leads to desirable/undesirable outcomes.

Early-term tutorial evaluation

These comments are for me, I take them seriously, and I'm going to try to make changes based on them

I gave students the following handout:

Sophomore Tutorial: Democracy - Government 97 (Spring 2014)

Handout for Tuesday, Feb. 25, 2014

Where we've been, where we are, where we're going

Why democracy?

Democracy: ancient and modern

How democratic are elections?

This week is on democracy, rights and courts

Next week how democratic is the US?

Is judicial review democratic?

- Waldron: no

- Bickel: yes

Short video!

Federalist paper #78

“... the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the 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... 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 even for the efficacy of its judgments.”

Short exercise

Early term course evaluations

I gave students the following early-term section evaluation form:

Early semester tutorial evaluation
Gov 97

1. With regard to your learning, what is the most effective aspect of this tutorial, and why?

2. What is happening in the tutorial that you would like to see changed?

3. What would you like to see happen that isn't happening?

4. Please assign each statement a score of between 1 and 5. 1='not very effective' or 'strongly disagree'; 5='very effective' or 'strongly agree'

The teacher explains material clearly.

1 2 3 4 5

The teacher directs and stimulates discussion effectively.

1 2 3 4 5

The teacher indicates important points to remember.

1 2 3 4 5

The teacher establishes objectives for each class meeting.

1 2 3 4 5

The teacher is well-prepared.

1 2 3 4 5

The teacher answers questions well.

1 2 3 4 5

The teacher explains the thinking behind his/her statements.

1 2 3 4 5

The teacher stimulates interest in the material.

1 2 3 4 5

The teacher effectively encourages students to ask questions and to give answers.

1 2 3 4 5

The teacher is available outside of class.

1 2 3 4 5

The teacher adjusts the pace of class to the students' level of understanding.

1 2 3 4 5

Please rate the effectiveness of the teacher's teaching in aiding your learning.

1 2 3 4 5

5. What topics are you still unsure or confused about?

6. Thank you! Any other comments?