

Being the Supreme Court:
Teaching Constitutional Law to Undergraduates as a Semester-Long Simulation

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Abstract

The use of simulation and role-playing to teach constitutional law is nothing new. From stand-alone mock Supreme Court sessions to more integrated, multi-class approaches, there is a wide and robust diversity of approaches in higher education. A few of these seek to deliver a more sustained, hands-on learning experience, taking students through a whole Supreme Court cycle or sustaining some form of simulation throughout a semester. This paper surveys these various approaches and some of the scholarship that has been written about them, including an assessment of the advantages and limitations of each approach.

The paper then introduces a comprehensive, semester-long, immersive approach to simulating the Supreme Court within the context of an undergraduate course on Constitutional Law. After some foundational instruction during the first couple weeks of the semester, the structure of the course mimics that of the Supreme Court itself in several respects. From discuss lists to oral arguments, conferencing to opinion writing and final votes, the course repeats this cycle of Supreme Court activity as the course moves from one content area to the next throughout the term. Students are encouraged to utilize a legalist approach and a judicial attitude for the term, and these become significant aspects of interactions between the “justices.” The writing assignments in the course are majority and dissenting opinions where students navigate the whole process of preliminary votes, researching precedent and other legal issues, writing draft opinions, peer feedback and rewrites, and final drafts which are voted and then announced.

This approach to teaching constitutional law is often cited by graduates who go on to law school as the course that best prepared them, or that gave them confidence to argue cases and legal arguments when their fellow students have been hesitant. The benefits of this semester-long, comprehensive approach are discussed, as are the limitations and possible drawbacks.

Please note that this paper is still a work in progress. A general literature review on simulations and games as well as a more in-depth literature review specific to judicial and Supreme Court simulations are forthcoming but could not be completed before the start of this conference. –BRK

Introduction

The use of simulation and role-playing to teach constitutional law, both in law school and at the undergraduate level, is nothing new. From stand-alone mock Supreme Court sessions that highlight oral arguments or conferencing, to more integrated approaches that have students write majority and dissenting opinions or experience interpersonal dynamics between Justices, there is a wide and robust diversity of approaches in higher education. A few of these seek to deliver a more sustained (and as such, it is hoped, a deeper) hands-on learning experience, taking students through a whole Supreme Court cycle or sustaining some form of simulation throughout a semester.

The paper then introduces a comprehensive, semester-long, immersive approach to simulating the Supreme Court within the context of an undergraduate

course on Constitutional Law. After some foundational instruction during the first couple weeks of the semester, the structure of the course mimics that of the Supreme Court itself. Students are asked to adopt a judicial approach to decision-making and to be cognizant of others' approaches. As each topic arises in the course (e.g., freedom of speech), the student Justices gather in conference to choose cases from a "discuss list" to accept for oral arguments. The cases are subsequently argued by students with the class encouraged to follow what Justices do during oral arguments. This is followed by a conference in which student Justices follow Supreme Court customs in debating and taking preliminary votes on cases, as well as handling the next "discuss list" in the course. Each topic area is bracketed by introductory and concluding class sessions where judicial/constitutional concepts, similar cases, and other relevant material is discussed. This cycle repeats for each topic throughout the term, from discuss lists to oral arguments to conferencing, with emphasis on internal dynamics and external influences that affect the Court's behavior. The writing assignments in the course are majority and dissenting opinions, with students having to navigate the whole process of preliminary votes, peer feedback and rewrites, researching precedent and other legal issues, and trying to put their own mark on the Court's decision while maintaining their majority or making a bold statement in a dissent.

This approach to teaching constitutional law is often cited by graduates who go on to law school as the course that best prepared them, or that gave them confidence to argue cases and legal arguments when their fellow students have been hesitant. The benefits of this semester-long, comprehensive approach are discussed, as are the limitations and possible drawbacks.

Review of Selected Literature

Use of Simulations in the Classroom

This section of the paper is forthcoming soon.

Supreme Court/Judicial Process Simulations

This section of the paper is forthcoming soon.

How the Simulation Works

Aligning the Simulation with Course Goals, Learning Objectives, and Content

By now, the virtues of aligning goals and objectives, activities/assignments, and assessment within a higher education course offering are well-established (Biggs and Tang 2011). There is an abundance of scholarship over the years, too many to mention here, regarding learning outcomes and other benefits of constructive alignment. Still, the practice is utilized unevenly as some faculty resist or remain ignorant to the practice for a variety of reasons. This is true not only of courses that include active learning techniques such as simulations, but indeed of all course offerings. And as the scholarship on this topic continues to grow and deepen,¹ the benefits of aligning goals, activities, and assessment become ever more apparent.

Related to this – and not limited to courses with active learning approaches such as simulations – instructors should be transparent with students before the simulation begins about its purposes, the type and utility of knowledge gained, tasks to be

¹ Hailikari, et. al. (2022), for example, investigate student perspectives on active learning techniques and course alignment, arguing that “the student perspective has often been neglected when exploring its influence on student learning.” (p.217)

completed, how those tasks will be assessed, and so on (Winkelmes, et. al. 2019).

Taking a “TILT” (transparency in learning and teaching) approach will increase student motivation, learning outcomes, and more. When this has been done specifically in these constitutional law courses, these benefits have been evident compared to before it was done.

Approximating the Supreme Court Process

The simulation is intended to approximate the major steps as a case under full consideration makes its way through the Supreme Court.² This process begins when cases are appealed to the Supreme Court. These writs go into the “cert pool” where justices or their clerks summarize arguments and divide cases between a “discuss list” and a “dead list.” The “discuss list” cases are considered in conference and those obtaining the support of at least four justices are placed on the docket for oral arguments. In the interim, both sides in each of these cases submit a brief, while outside parties are permitted to submit amicus curiae briefs. On the day of oral arguments, each party in a given case is given a block of time (typically 30 minutes) to present as justices ask questions. After this, the cases that were heard are discussed in conference and preliminary votes are taken. One justice is assigned the task of writing the majority opinion, and other justices are permitted to pen concurring and dissenting opinions. These draft opinions are then circulated amongst the justices and

² The process of issuing summary and per curiam decisions is discussed in this course, but they are not included in the simulation. For a more in-depth discussion of the Supreme Court process, see Epstein, McGuire, and Walker’s *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 11th edition (2023) and Baum, *The Supreme Court*, 14th edition (2022).

feedback is integrated into final drafts. After a final vote on a case is taken, the opinion is announced from the bench.

In the course, discuss lists are assembled by the instructor with cases selected to illustrate concepts being discussed in that section of the course. Landmark cases and those that touch on important contemporary dynamics are given preference. These become the cases students are responsible to know for exams and other course assessments. Each case on a discuss list must be briefed by each student in a style designed by the instructor;³ these briefs roughly simulate in content the cert pool memos produced in the actual Supreme Court (minus the recommendation to place the case on the discuss or dead list). During a conference session, students select from the discuss list a pre-set number of cases to be argued in class (almost always four per class session), after which students sign up to be primary or backup counsel for one side in one of the cases. For the first time in Spring 2023, students arguing a side in a case are being asked to submit to the class a modified case brief ahead of oral arguments, one that substitutes their own arguments for how the case should be decided in place of the majority and dissenting opinions. These are made available to all students prior to oral arguments and are intended to represent the briefs submitted to the Court once a case is on the docket.⁴ In-class oral arguments afford counsel five minutes each to speak as the rest of the class sit as justices hearing the case. During the next class session, all students sit as justices in conference to discuss cases and take preliminary votes, as well as to make decisions about the next section's discuss

³ The format for case briefs deviates from what is typically expected in law school. This format asks students to more explicitly identify constitutional provisions, precedents, relevant laws and orders, etc.

⁴ At this time, amicus curiae briefs are not part of the process. However, consideration is being given to allowing any student in the class to submit one for any case being argued.

list. Students are required to construct one majority and one dissenting opinion based on the in-class preliminary votes, and may sign up to write on any case that was argued in class. These opinions are circulated amongst the other students in the course, ultimately voted on, and then announced by the instructor during the next class session.

Steps in the Supreme Court Process, Real vs. Simulation

Cases are sent to the cert pool; memos summarize and recommend action	Cases assigned in the course must be briefed; briefs come later and with no recommendation
Discuss and dead lists are generated	Discuss lists are created by the instructor
In conference, justices accept cases from the discuss list based on the Rule of 4	In conference, students select a set number of cases from discuss list to argue
Briefs submitted by litigants and by outside parties (amicus) ahead of oral arguments	Students arguing cases distribute modified briefs replacing majority/dissent with their arguments
Litigants are typically given 30 minutes to argue; justices ask many questions	Students are given five minutes to argue; other students encouraged to ask questions
Cases are discussed in conference; preliminary votes are taken	Cases are discussed in conference; preliminary votes are taken
Justice selected to write majority opinion; others may write concurring/dissenting	Student must sign up to write one majority and one dissenting opinion in the course
Drafts of opinions are circulated; final drafts are voted and announced	Drafts of opinions are circulated; final drafts are voted and announced

A note on completing case briefs is warranted at this point. While each student is officially responsible to submit a brief for every case on each discuss list, this adds up to a fairly daunting task. The instructor points this out in class and lets the students know that they may, if they wish, work together to “split” the lists and share briefs. Importantly, this is not an official part of the course, and it is entirely up to students if and how they want to do this. While every course so far has chosen to do this, it has

taken different forms. Some semesters, the whole class devises a system for assigning and sharing briefs;⁵ Other semesters, smaller groups are formed. Either way, a couple bits of advice are emphasized multiple times through the term. First, have them build redundancy into the system so that at least 2-3 students are briefing the same case. This gives students a choice of briefs to adopt, and acts as quality control if one of the briefs has errors. Second, make certain that all the work being shared is legitimately the students' work and not plagiarized from an online or other source. They are reminded that when they take the action of submitting them under their name, they are just as responsible for academic dishonesty as the person who created them. This gives added incentive for students to carefully review the briefs, rather than just blindly adopting them (though that still sometimes happens). Last, a recommendation is made to front-load due dates into their peer-to-peer submission system so that students are not waiting for case briefs hours before they are due or hours before an exam. They are also reminded that since this "divide and conquer" approach is not officially part of the class, students are able to exclude someone from the group for not doing the work, doing it well, and/or doing it on time. This gives additional significant motivation for students to comply with the rules set by the group. Overall, this further contributes to the development of interpersonal dynamics that manifest themselves in the simulation, as they cooperate to complete a task, actively review and evaluate one another's work, and gain additional insights into how one another thinks in terms of the content.

⁵ Microsoft Teams has made this not only exceedingly easy for students, but also made it possible for the instructor to "check in" on progress, peruse completed and in-progress briefs, and more. However, students wishing not to give the instructor access are welcome to use a different file sharing platform.

Preparing Students for the Simulation

Many undergraduate students enter into an upper-level course on constitutional law with little to no previous background on the subject, save for what they may have gained in an introductory American politics course or a course on judicial politics and procedures. Most have never read a majority or dissenting opinion as a primary document.⁶ Even those with some degree of knowledge about Supreme Court cases may know little about the internal workings and decision-making dynamics that take place within the so-called Marble Temple. This makes the first two weeks of the semester crucially important.⁷ In order for the simulation to be effective, students must have an understanding of such topics as the Court's place in the political system, judicial power and constraints, participants in the process (litigants, attorneys, clerks, etc.), the Supreme Court process, and determinants of decision-making.

During this initial segment of the course, it is also important to spend time on the underlying principles that will shape discourse on topics in the course.⁸ Discussion of judicial review and jurisdiction are certainly important at this stage regardless of the topics to be presented later in the term. In offerings focused on governmental powers, this is followed by a additional emphasis put on separation of powers, checks and balances, and federalism; in offerings focused on civil liberties, additional emphasis is placed on incorporation of the Bill of Rights.

⁶ More generally, according to multiple C-SPAN/Pierrepont Supreme Court Surveys, a majority of Americans are unable to accurately identify at least one Supreme Court justice and even fewer are able to accurately identify one Supreme Court case other than *Roe v. Wade*. See <https://www.c-span.org/scotussurvey2022/> for the 2022 survey results.

⁷ This assumes a standard 15-week semester. Adjust accordingly where necessary.

⁸ Muskingum University offers two upper-level constitutional law courses, one focusing on governmental powers and the other on civil rights and liberties. One is not required to take the other.

Giving an exam or other assessment makes sense at this point. Some students may struggle later in the course without a working understanding of the above material, and an exam or assessment here directs and motivates students to study it before the simulation begins. A quick turnaround on grading and providing feedback will help to identify gaps in understanding for individual students or the class as a whole, providing an opportunity to address those gaps before delving into the various issue areas of the course. There are also side benefits to this approach. Doing so facilitates scaffolding techniques (Hogan and Pressley 1997; Kitchen 2022) for more in-depth material later in the course. Rather than a summative assessment at this point, a more frequent formative or lower-stakes approach to assessment (Roediger III and Karpicke 2006) could also work for this initial segment of the course by identifying gaps in understanding even earlier and more specifically to a particular content area.

The Simulation in Action: The “I-O-C-C” Cycle and Opinion Writing

The fundamental objective of the simulation is to have students do more than simply study the cases and concepts that make up constitutional law. Instead, they interact with them through the eyes of a Supreme Court justice. As they learn about important concepts on topics ranging from presidential power to rights of the accused, the students concurrently analyze and interpret them through the cases that they are managing through the various steps of the Court’s process. And as they read about the various aspects of life in the Marble Temple – judicial attitudes, interpersonal dynamics, and external influences, for example – the students are navigating some form of them in the simulation itself as they complete simulation tasks. This form of active learning

results in higher motivation to learn, greater student engagement with the material, and better learning outcomes (Scheyvens, et. al. 2008).

Once the foundational material has been covered, the course is divided into sections, each focusing on a different content area in the course. For the version of the course that focuses on governmental powers, for example, there is a separate section for presidential power, congressional power, inter-branch relations, and so on. Within a section there exists a four-stage cycle of introduction, oral arguments, conferencing, and conclusion (I-O-C-C). Each of these, explained in more detail below, typically takes one class session.⁹ Also during the semester, students are tasked with writing one majority and one dissenting opinion¹⁰ based on their own preliminary votes in conference and taking each of them through the process from conference to a final opinion announced from the bench.

1st Session: Introducing the Topic

Just as there should be alignment between course objectives, activities, and assessment, consideration should be given to how the cases on each discuss list feed into and contribute substantively to a deeper understanding of course concepts and ideas, trends and patterns over time. What are the major concepts to discuss and analyze when teaching about, for example, executive powers? These may include such subtopics as executive privilege, war powers, and presidential appointments. The question to ask, then, is which cases would be most helpful in illustrating the

⁹ For topics that merit additional time and attention, where for instance an instructor may want students to interact with cases on a variety of subtopics, this specific stages can be augmented.

¹⁰ It is common in this course to offer extra credit to students willing to write a concurring opinion on a separate case.

extent/limitations of these powers and their evolution over time? The vast majority of constitutional law textbooks include abbreviated majority and dissenting opinions on select cases, and having that symmetry between the assigned readings and the cases in the simulation reinforces their importance in understanding the concepts at hand.

This session is typically closer to a traditional classroom experience, but it would be a mistake to use this class session to be the “sage on the stage” and simply present the material. Class discussion, frequent student input, and a focus on the different ways to interpret these powers foster for a more interactive classroom environment, making it more likely that students will remain as active participants at the oral argument and conferencing stages rather than have to become active participants later in the cycle. It is also important to make the content accessible, especially to those with little to no previous coursework in political science or law. If students are not reassured that they are capable of understanding what seems by some to be inaccessible content, they will have less confidence in subsequent sessions when arguing cases or debating them in conference.

2nd Session: Oral Arguments

Students sign up for oral arguments during the previous conference session, when students determine which cases from that discuss list will be argued. As long as the distribution is equitable, any method for deciding who will argue when is sufficient. Each side of each case a sign-up for primary counsel and backup counsel, and students are asked to sign up for one of each on different cases. Without assigning backup counsel, a student absence when they are scheduled to argue means that either that

side of the case will not be argued, or that the instructor must argue it. The first outcome is undesirable for obvious reasons. The second outcome is undesirable because a much different dynamic exists with the students when this occurs. There are frequently little to no questions asked during oral arguments as they feel less than confident or even intimidated to question the person teaching the course, and that side of the case tends to win more often in preliminary conference votes due to the likelihood that the instructor's argument seemed more thorough and authoritative. There is also a secondary benefit to having backup counsel, in that there are now two students working on a given side of the case and the two can collaborate rather than having to go it alone.

A new element of the simulation in Spring 2023 is having counsel for each side submit modified case briefs for use by the class prior to the day of oral arguments. Students preparing for arguments have traditionally been encouraged to complete case briefs in advance anyway, and a few years ago this expanded to making those case briefs available to the class so that they could ask more informed questions during arguments.¹¹ What wasn't yet simulated was the practice of reviewing briefs from each side ahead of time, complete with arguments for how the constitutional questions should be answered and how the case should be resolved. The new, modified case briefs do not (for now, at least) contain summaries of the majority, concurring, and dissenting opinions. In their place is the set of arguments counsel is making for why the Court should rule in their favor in the case. This gives students a preview of the arguments to

¹¹ As much as instructors might want to believe that all students will research these cases ahead of time and come prepared with incisive and insightful questions, the reality is that nearly none of them will do this absent an incentive. Making the briefs available gives them a "cheat sheet" of sorts to understand the case, making questions more likely and more on point.

be made and thus more opportunity to ask relevant questions. To incentivize students to make use of these pre-oral argument briefs, the instructor makes it known frequently that there will always be questions for the students arguing cases. However, if students are the ones asking questions, they can “save” their classmates from the (presumably more difficult) instructor questions. To this end, audio from a couple real Supreme Court cases are played in class, and students are encouraged to listen to the real oral arguments when preparing to argue their own cases.

On the day of oral arguments, each student is afforded five minutes. In the tradition of the Court, that time continues to run even when justices are asking questions of counsel. To emulate what happens in real life, students are discouraged from focusing on the facts of the case or from reading from either prepared remarks or their case brief. Rather, they are advised to devote most of their time to the constitutional provisions involved and the constitutional question(s) at hand, including how they believe the justices should rule and why. The instructor gives a signal with one minute remaining, and will cut off discussion when “counsel’s time has expired.”¹²

Once both sides in a case have argued, it may be appropriate to inject brief additional information and insight about the case. (E.g., “Keep the arguments from this *Nixon v. Fitzgerald* case in your mind when you hear arguments in *Clinton v. Jones*” or “Justice Thomas decided to recuse himself in *United States v. Virginia* (1996) because his son was a cadet at VMI at the time.”) It may also be helpful, especially the first time a student has argued, to validate their effort and highlight something they did well. For most students, this type of in-class presentation is unfamiliar and can be high stress;

¹² I have yet to successfully justify the expense of purchasing an elaborate podium with warning lights akin to that found in the Supreme Court, so hand signals continue to be how this is done.

giving them reassurance (and perhaps some pointers for next time if necessary when you can be one-on-one) will facilitate more confidence the next time around. Especially helpful has been to give kudos whenever a student does something you want to encourage others to do, such as citing precedent or specific constitutional provisions.

3rd Session: Conferencing

The conferencing step in this cycle is most similar to student-led group discussion in a typical class setting. A chief justice for the day is established, and deliberations begin on the cases previously heard. A couple items are worth noting at this point. First, it is advisable to keep conference groups no larger than 8-10 students; in larger classes, it is recommended that the class be split into multiple conferences (e.g., Supreme Court A and Supreme Court B) and that these groups stay together throughout the semester. This way, students can experience a more analogous group dynamic and avoid the unwieldy prospect of progressing through multiple cases with 15-20 or more students expected to weigh in each time. Keeping the group memberships the same all semester will afford them the opportunity to learn one another's approach to the tasks at hand, including ideological tendencies, legalist philosophy, interpersonal style, and so on. Second, while some groups may want to establish a permanent chief justice, this should be discouraged so that each student can experience the power of shaping how discussion proceeds, who gets to speak and when, the power of casting their vote last, etc. With an assist from the instructor, students can discover how important this can be. Additionally, as will be described below, the chief justice is the one who determines how the majority and dissenting reasoning is noted/recorded on

the conference voting form. This can influence how a student later in the semester writes a majority or dissenting opinion, as they often rely on those notes to remember heavily to remember what arguments were made during conference.

As each case is considered, students are prompted to recount what happened with this case in the “real” Supreme Court – which side won, what the vote was, and what action was taken (e.g., affirm, reverse, etc.). This not only helps them to recall this information later in the term (on an exam, for instance), but it usually prompts at least some of the students to pull up the case on their devices and have it in front of them for reference during the discussion. After that, the chief justice manages discussion, making sure that all who want a say has a chance to speak. Students are reminded to focus on the constitutional provision(s) and question(s) at the center of each case, and that this is an opportunity not only to express their opinion but to try and influence the opinion – and ultimately the vote – of the other justices. The role of the instructor during these discussions is part goalie (making sure the discussion stays within the bounds of the case and the issues to which it relates) and part traffic cop (gently directing group discussion to more relevant points or ones they may not have considered). It is important that the instructor not become too much a part of the debate on any case, as their point of view can discourage divergent points of view from being expressed and can skew how that case will be decided. (See previous discussion on instructors giving oral arguments for more elaboration.) As justices declare how they’ve voted, the chief justice (or their designee) will record those votes as well as the majority and dissenting reasoning on an instructor-created “conference voting form.” These serve to keep track

of who has signed up to write specific opinions and what arguments were made at the time.¹³

Once the cases have been discussed and preliminary votes recorded, the class proceeds to consideration of the next discuss list. This list will ideally have been available to students for a few days or longer by this point, so that they have the opportunity to explore them before deciding which ones to argue in class. They are advised during conference to consider avoiding cases that were either unanimous in their ruling (thus making it unnecessarily more difficult for anyone arguing the losing side without the benefit of a dissenting opinion to reference) or that would be very difficult to argue one side of in the contemporary context (e.g., the winning side in *Plessy v. Ferguson* or the losing side in *Brown v. Board of Education*). Beyond that, students are given wide latitude in selecting cases for oral argument. If an instructor would like to make sure specific content or subtopics are argued and debated in a given section, parameters for selecting specific subsets of cases can be established.¹⁴

Conference can also be a good venue to reinforce material the students studied early in the semester about interpersonal dynamics on the Court. From recognizing judicial and political tendencies to experiencing coalition-building and individual influence of others, these sessions will reinforce through students' actions what they might not otherwise experience.

¹³ To avoid overlap and to make the process at least somewhat more authentic, only one student per conference is permitted to write any given majority or dissenting opinion on a case.

¹⁴ It is important to note that the criteria by which the Court determines cases worthy of review – justiceability, standing to sue, ripeness, mootness, etc. – are not helpful and cannot truly be applied here. This is because the overwhelming majority of cases under consideration in the course have already been deemed to pass these criteria. While it would be valuable for students to be able to apply these criteria in their own individual and collective decision-making, they could theoretically determine that nearly all of the cases throughout the semester meet all of these criteria.

4th Session: Concluding the Topic

The conclusion class session is similar to the introduction in that it more explicitly discusses concepts and ideas, trends and patterns over time. During this class, however, emphasis is placed on how the students observed these concepts/dynamics reflected in the cases that were argued. Another valuable avenue of discussion is to ask in more depth why the conference group(s) made the rulings they did and compare those to what happened in the real Supreme Court (thus reinforcing knowledge of those cases). Also productive during this time is to ask how other cases on the discuss list fit into the larger discussion and how, based on the conference decisions that were recently made, other cases on the discuss list might have been decided.

Majority and Dissenting Opinion Writing

During the course of the semester, each student is required to write and submit one majority and one dissenting opinion.¹⁵ These are typically somewhat back-loaded, to give students more time to become acclimated to how opinions are constructed and what they try to accomplish. When opinion writing was added to the simulation, a number of benefits were realized. First, it became another element – and a very important one – of interaction and activity on the Court that was now integrated into the students' experience. Having them navigate the circulation of drafts, the negotiation over language/content, and the prospect of winning or losing a case based on what they wrote all lend to an active learning upgrade to what previously was a research essay on

¹⁵ Concurring opinions are sometimes offered as a way to earn extra credit. The requirement here is that the student voted in the majority, but had reasons that diverged from the majority opinion.

a chosen area of constitutional law. Second, there is now additional relevance to conference discussion over the cases that were argued, as a student must both select opinions to write based on their own votes in conference as well as integrate the arguments that were made for that side of the vote (which is why it becomes important for students to write these down on the conference voting forms when taking preliminary votes). Third, this turns what can be a daunting writing assignment into a collaborative endeavor. Seeing what other students are doing can help someone unsure of how to proceed, and everyone has the ability to help classmates improve their work before it is submitted for a grade. The more that the instructor can play up the interactive, simulation-centered aspects of this assignment, the less students will see it as unimportant “busywork” to be trudged through and forgotten.

As in the real Supreme Court, there can be only one majority opinion, and the first student to sign up for it on that case’s corresponding conference form has sole claim to it. In order to distribute work over more cases, the same is made true of dissenting opinions, namely that there can only be one per case. Importantly, they must have voted in the majority or minority in their conference to lay claim to writing a given case’s corresponding opinion. It should be noted to students that even if votes switch during this process, opinions intended as majority opinions will still count as a majority opinion for purposes of this assignment even if they end up becoming the dissent. Similarly, dissenting opinions that are ultimately able to garner a majority of the votes will still count as dissenting opinions for the assignment’s purposes. This would otherwise become a point of worry for at least a few students who would wonder if they had to write another yet another majority/dissenting opinion to complete the assignment.

Typically, there are four due dates associated with this assignment: submittal of initial draft, feedback provided by fellow justices, submittal of final drafts, and final voting on the cases. Having two rounds of this will spread out the work, ensuring that students are not working on two opinions simultaneously while also trying to provide feedback to others in the class. In terms of that feedback, having students work with others in their own conference ensures that they won't be bogged down having to review (or skim or worse, as the number grows) an inordinately large number of draft opinions. Students are asked to provide some amount of feedback to each other opinion in their conference, and this feedback must be substantive (more than just a general "great job" or "I agree with the reasons you argued" type of comments). There is an expectation that students will integrate at least some of that feedback into their revised drafts, but it should be acknowledged that not all of it must be. The use of a discussion board in the course's LMS site (e.g., Blackboard or Canvas) lends itself well to submitting drafts and getting feedback and votes. Announcing the votes in class becomes a fun activity that can spark conversations if votes changed in significant ways or there was otherwise something notable about the case as it was being circulated.

Benefits and Drawbacks of Employing a Semester-Long Simulation

There are many advantages to employing an immersive, semester-long simulation to teach constitutional law, many of which have been discussed already at various points in this paper. An active learning approach to the material gets students more engaged with course content than a more traditional format, and the peer-to-peer interactivity built into the simulation highlights the collaborative nature of the course.

This in turn fosters more collaboration, informal peer tutoring, and student-led learning in both formal and informal settings. Keeping stakes low and validating any genuine engagement with the material (e.g., valuing any genuine attempt at oral argument their first time out) is likely to breed early confidence and make students feel they can tackle more difficult material later in the semester. This active learning approach also allows the instructor to notice and address student struggles much earlier, which in turn provides earlier and more sustained opportunity to assist before that student may feel completely overwhelmed in a class where material scaffolds throughout the term.

The benefits of simulations have also been discussed earlier in the paper. More can be written in the literature about the comparison between longer-term, sustained simulations vs. shorter-term or single-class exercises, as well as between more expansive vs. limited-scope simulations. One benefit in this instance is that as students gain confidence acting in a repeated cycle, they gradually find themselves delving deeper into their roles as well as considering the material more deeply. This repeated cycle of steps, actions, and decisions is somewhat akin to discussion in game theory about games with multiple/repeated iterations, the repeating cycle over the course of a semester lends itself to learning and adaptation as players become more familiar with each other. Tendencies and patterns are recognized, votes are anticipated, and coalitions form gradually over time to impact the outcome of cases. This gives students a deeper understanding of the dynamics of being a Supreme Court justice and eases them gradually into deeper analysis of the often complex material that is presented in such a course.

Opting for an in-depth, long-term simulation is of course not without challenges and disadvantages. Primary among these is the opportunity cost of having less time to discuss course concepts, dynamics and the cases themselves. The oral argument and conference days combine to claim just over a third of the scheduled class meetings, significantly reducing the amount of time that can be devoted to more traditional lectures and class discussions of important content. A solution to this is to “flip the classroom” (Walvoord and Anderson 1998; Lage, Platt, and Treglia 2000) so that students are given a “first exposure” to the material before the introduction session of a cycle. Care will need to be taken that there isn’t too much reliance on this flipped material, and that may take some in-class discussion to help some students bring it all together in a more meaningful way. This is also being done, however, through the completion of modified case briefs. So long as these briefs ask students to provide specific constitutional provisions and questions, relevant legislation/orders, precedents, and the case’s overall impact/significance, the concepts given less time in class are reinforced by completing these briefs.¹⁶ Students can also be taught to “cluster” cases together to more effectively study them, essentially grouping cases based on similar constitutional provisions, questions, or other case dynamics that make them easier to remember in relation to one another. Plus, having a conclusion day to round out a cycle provides the opportunity to revisit and reinforce material previously discussed, this time with the added context of how this material was illustrated in the assigned cases.

¹⁶ This argument is somewhat lessened when considering that students may split up the discuss lists and only do a few cases. So, it might be worth exploring a requirement that a certain minimum number of briefs are self-completed.

Another perceived time-related drawback to this approach is the amount of time it could demand from the instructor. And while it does take some prep time to build thoughtful discuss lists, assign cases that best illustrate preferred course concepts, etc., it is also true that what's described in this paper certainly does not have to happen all at once.¹⁷ In fact, the current simulation is a product of gradual, progressive assessment, reflection, and adjustment to make the experience better each time it was offered. After nearly 20 years of teaching constitutional law in this manner, the simulation is still evolving and growing to become more authentic and a more effective vehicle for deep, active learning.

It is also true that such a substantial focus on active learning in the form of an extended simulation will affect the learning of different groups in class differently. Specifically, there is evidence to demonstrate that active learning techniques of various kinds heavily favor male students who are more comfortable speaking up and being active participants in class (Aguillon, et. al. 2020). This is certainly true specific to simulations (Engel, Mayersen, and Eidenfalk 2019). Care must be taken to ensure that all students – especially those in sometimes marginalized groups who are not as likely to participate enthusiastically at first – are empowered to be full participants in the simulation.

Where the Simulation Could Go From Here

¹⁷ See, for instance, Glazier, Rebecca A. (2011). "Running Simulations without Ruining Your Life: Simple Ways to Incorporate Active Learning into Your Teaching." *Journal of Political Science Education* 7: 375-393.

Since its inception nearly 20 years ago, this simulation has been steadily adjusting, adapting, and growing to better deliver a more analogous and authentic experience for students. These are additions to the experience either recently adopted or being considered for 2024 and beyond.

- For the first time in 2023, students are asked to submit a modified case brief prior to delivering their oral argument. In place of the majority and dissenting opinions, this document (which is tentatively being called a memo) summarizes the argument(s) that they will deliver during oral argument. The documents from both sides in the case would be made available to all students in the course, helping them to be more informed and prepared to ask questions during that class session. This will serve to represent the briefs submitted to the Court before oral arguments once a case has been placed on the docket.
- Related to this, there is consideration of encouraging anyone in the course to submit this same type of document, but coming from a party not directly tied to the case. These documents could be seen as *amicus curiae* briefs and as such represent this practice in the real Supreme Court.
- A step currently missing from the simulation is the ability to place petitioned cases on the dead list instead of the discuss list. Until a few years ago, students were sometimes given the option of taking a case or two off of the discuss list, either when the lists were being considered in conference or the class session prior to the next exam. While preserving the ability to overrule/veto any of these decisions is important, providing the students with the power to possibly set their own case lists could afford students a little more control of the process.

- One aspect of the Court that is lacking in the simulation is influence from external sources, including interest groups and public opinion. This can be simulated in some fashion by the instructor, though it would be additional work to generate mock news stories and it is uncertain how much they would affect the decisions of student justices.¹⁸
- Another possible enhancement of the simulation could be a mid-semester self-evaluation as a justice, wherein each student examines themselves with regard to judicial attitude, legalist approach, interpersonal style, ideology, and so on. Doing this could be a way for students to revisit this material from the first two weeks of the semester, while reflecting on how these factors have influenced their own decisions in the course to that point.
- It was contended earlier in this paper that the reality of having less in-class time to discuss the connection of course concepts to the cases and the connections between the cases themselves can be significantly ameliorated by the active-learning, “flipped classroom” nature of requiring students to brief cases. In this way, it was argued, students will see course concepts in action and will discover for themselves the connections that exist between cases. However, it has also been revealed that the instructor allows students to split the discuss lists and share briefs, thus making their individual workloads more realistic and manageable (and fostering greater collaboration). This would work to weaken the benefits highlighted above, so perhaps a balance can be struck by requiring

¹⁸ Anecdotal evidence from an in-depth, long-term simulation conducted on international security relations suggests that even the generation of high-stakes, high-pressure scenarios designed to alter a student group’s decisions and behavior often only meets with limited success.

that a certain minimum number of case briefs from each discuss list be completed by the student themselves.

Appendix A: The Modified Case Brief Format

POLS 317-1: Constitutional Law Constitutional Law Case Briefs: Some General Information and Suggestions

Preparing Each Case for Class Discussion and Exams

For each of the assigned cases this term, all students must be able to identify and explain; (Examples are given after each listing, followed by helpful suggestions.)

1. the full name of the case and the year it was decided
 - *Marbury v. Madison* (1803)
 - Don't worry about the long form citation; names and year are sufficient.
2. basic facts of the case
 - After the election of 1800, President Adams appointed several...
 - Don't concentrate too much on this; only include basic relevant information and enough to help you remember the case and distinguish it from others.
3. all provisions of the Constitution in question
 - Article III, Section 2, original jurisdiction
 - Be specific here! It's not completely accurate to just say "Article III" here.
4. all constitutional questions involved (following from the previous item)
 - Is Article 13 of the Judiciary Act of 1789 unconstitutional in its attempt to expand the Court's original jurisdiction as outlined in Article III, Section 2...
 - As in the last item, be specific! The provision(s) and the question(s) should be aligned in this way.
 - Remember that some cases have more than one constitutional question.
5. any statutes, etc. playing a significant part in the case
 - Article 13 of the Judiciary Act of 1789
 - There won't always be a relevant statute, executive order, etc. As a rule of thumb, if it's repeatedly referenced in the majority and/or dissenting opinions and seems central to the case, include it here.
6. any previous court cases (precedents) playing a significant part in the case
 - none
 - Does this ruling overturn or reaffirm another significant case? What are the precedents that may be affected by this ruling?
 - Note that there won't always be a relevant precedent for purposes of this class. As above, if it's repeatedly references and seems central, use it.
7. the majority opinion and the reasoning behind it
 - [Marshall] The Court does not hold jurisdiction in this case because the provisions in the Jud. Act of 1789 allowing for original jurisdiction are...
 - It is crucially important that you include (and study!) the reasoning behind the decisions. It is insufficient to say that the majority sided with someone.
8. any concurring and/or dissenting opinions and the reasoning behind them
 - none (four joined majority opinion, and two did not participate)
 - See the note from Item #7.
9. the impact and significance of the ruling (legal doctrines, etc.)
 - This case established the Court's exercise of judicial review for...
 - Why are we spending time studying this case? What is/was its impact on society and politics in the US? Explain the reasons why.

Note: While a first draft might initially be quite long, it is recommended that each case brief be kept to one page or less. Ideally, every time you study that case could get even smaller for the additional items that you remember. *Do not rely on the use of your case briefs during the exam.* Study the cases (through the briefs) as much as possible so that you don't spend all of your in-class exam time looking up things in your notes and briefs.

Appendix B: Sample Discuss List

Constitutional Law I: Governmental Powers Spring Semester, 2023

Discuss List No. 2 Congressional Powers

NOTE: Be sure to look up each case somewhere like oyez.org before selecting which cases to argue.

McCulloch v. Maryland (1819)

How much power does the Necessary and Proper Clause in Article I extend to Congress?

Barenblatt v. United States (1959)

Does a contempt of Congress conviction by Congress actually violate the convicted person's 1st Amendment rights?

Powell v. McCormack (1969)

Can Congress exclude an elected member from its proceedings without expelling that member altogether?

Gravel v. United States (1972)

Does the Speech and Debate Clause in Article I protect members of Congress only, or does it extend to congressional aides as well?

Hutchinson v. Proxmire (1979)

Is the Speech and Debate Clause protection limited to statements given on the floor of Congress? If not, how far does it extend?

INS v. Chadha (1983)

Is it a violation of the separation of powers to give to a chamber of Congress the power to effectively "veto" legislation previously passed but improperly executed?

Mistretta v. United States (1989)

Does the congressional delegation of policymaking power to an executive agency effectively give that agency legislative power, and thus constitute a violation of the separation of powers?

US Dept. of Commerce v. Montana (1992)

Are census-based congressional rules for determining which states gain/lose seats in Congress unconstitutional?

US Term Limits, Inc. v. Thornton (1995)

Do state laws and amendments that impose term limits on members of the US Congress violate Article I of the Constitution?

Dickerson v. United States (2000)

Can Congress effectively overturn a Supreme Court decision with legislation passed after the Court's decision has been handed down?

Bond v. United States (2011)

Can a defendant challenge a federal conviction on grounds that the relevant statute is beyond Congressional power and inconsistent with the 10th Amendment?

National Federation of Independent Businesses v. Sebelius (2012)

Does Congress have the constitutional authority to require Americans to purchase health insurance and fine those who do not do so? See also *California v. Texas* (2021).

United States v. Windsor (2013)

Did Congress violate the equal protection requirements of the 5th Amendment Due Processing Clause by defining marriage as only between one man and one woman?

Bond v. United States (2014)

Does Congress have the constitutional authority to pass legislation to enforce a treaty that goes beyond the scope of that treaty?

ORAL ARGUMENT SIGN-UP SHEET

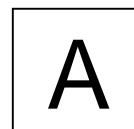
v.	
PRIMARY	PRIMARY
BACK-UP	BACK-UP
v.	
PRIMARY	PRIMARY
BACK-UP	BACK-UP
v.	
PRIMARY	PRIMARY
BACK-UP	BACK-UP
v.	
PRIMARY	PRIMARY
BACK-UP	BACK-UP

Primary/Backup Counsel: Allen, Burrow, Hurts, Mahomes, Pickens, Prescott, Purdy, Rodgers

Not Arguing This Time: Adams, Ford, L. Johnson, Kennedy, Madison, Obama, Pierce, T. Roosevelt,

Appendix C: Conference Voting Form

Supreme Court Conference Report Spring 2023 Session SUPREME COURT CONFERENCE REPORT: SC-A



Topic: _____

Date: _____

Case: _____

Actual Supreme Court: AFFIRMED REVERSED VACATED OTHER (EXPLAIN) SC VOTE: _____

Preliminary Vote (circle one for each Justice):

Justice Apple	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Berry	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Guava	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Kiwi	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Meloney	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Persimmon	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Raspberson	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Straw	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Tangelo	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.
Justice Winestart	AFFIRMED	REVERSED	VACATED	OTHER (EXPLAIN)	DID NOT PARTIC.

Preliminary Vote Totals: _____

Majority Opinion – Legal/Constitutional Arguments: (Complete this section on the back of this page; be detailed.)

Justice Assigned to Majority Opinion: _____
(All written majority opinions must be signed by all Justices in the majority before they are submitted.)

Concurring Opinion(s) – Legal/Constitutional Arguments: (Complete this section on the back of this page; be detailed.)

Justice(s) Assigned to Concurring Opinion(s): _____
(All written concurring opinions must be signed by all Justices who concur before they are submitted.)

Dissenting Opinion(s) – Legal/Constitutional Arguments: (Complete this section on the back of this page; be detailed.)

Justice(s) Assigned to Dissenting Opinion(s): _____
(All written dissenting opinions must be signed by all Justices in the dissent before they are submitted.)

FINAL VOTE: AFFIRMED: _____ REVERSED: _____ VACATED: _____ OTHER: _____
(Final vote to be completed ONLY for those cases in which a written opinion was completed.)

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