

POLITICS OF U.S. ELECTION LAW
Political Science _____
Summer Quarter 2008
Nussbaumer

Course overview

This course examines the politics of election law in the United States. Along the way we will learn something about the rules governing elections (both constitutional and statutory rules). However, this is not a law course. At least, it is not a course where the focus is on reading statutes and judicial opinions. Instead, the focus is on the politics of how electoral rules get enacted and implemented. “Politics” is used in two senses here: First, we will explore the strategic politics--the advantages that are (inevitably?) conferred on particular parties, candidates, and groups by the rules of the electoral ‘game’ and the ways in which electoral ‘players’ seek competitive advantage through changes in these rules. Second, we will explore the interplay between electoral rules and different political values and ideals about democracy and good government.

Through these explorations, we aspire to develop your abilities (1) to evaluate relevant empirical social science (and to discern when needed research is lacking), and (2) to articulate your own views about how electoral rules should be structured to facilitate good practices of representation.

Course requirements

- two 5-8 page essays, each worth 30% of the final grade
- one take-home final examination worth 20% of the final grade
- class participation worth 20% of the final grade (including, depending on class size, special components such as a re-districting simulation, and class discussion leaders)

Course materials

Most of the readings assigned for this course are social-science journal articles available for downloading from the *JSTOR* database. However, I may also assign excerpts from four books: Bruce Ackerman and Ian Ayers, *VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE* (YALE UNIV. PRESS 2002); Steve Bickerstaff, *LINES IN THE SAND: CONGRESSIONAL REDISTRICTING IN TEXAS AND THE DOWNFALL OF TOM DELAY* (Univ. of Texas Press 2007); Howard Gillman, *THE VOTES THAT COUNTED: HOW THE COURT DECIDED THE 2000 PRESIDENTIAL ELECTION* (UNIV. OF CHICAGO PRESS 2001); Richard Posner, *LAW, PRAGMATISM, AND DEMOCRACY* (Harvard Univ. Press 2003).

Course Outline

- I. Constitutional structure and history
 - A. Original constitutional provisions and amendments regarding elections
 - B. The informal constitution of election law: national political parties & politicians' electoral incentives

- II. Politics of expanding or contracting the electorate
 - A. Voter qualifications:
 - 1. history
 - 2. modern case-study in suffrage politics: felony-based disenfranchisement
 - B. "Procedural disenfranchisement" (deliberate contraction of the qualified electorate through procedural barriers)
 - 1. African-American voting between Reconstruction and the Voting Rights Act
 - 2. (possible viewing of the documentary *Freedom on my Mind*, or *Eyes on the Prize*, episode six)
 - C. Modern procedural choices that may--depending on one's viewpoint-- i) reduce the turn-out of eligible voters, or ii) enable fraudulent turn-out of ineligible voters
 - 1. voter registration rules
 - 2. voter identification requirements
 - 3. voting accessibility (language, disability, transportation)
 - 4. Australian comparison

- III. Different modes of representing the voters and aggregating their votes
 - A. The Electoral College and the Senate
 - B. Congressional apportionment and "one-person, one vote"
 - C. Congressional districting
 - 1. districting processes, institutions, and criteria
 - 2. racial gerrymander, partisan gerrymander, incumbency protection
 - 3. (possible re-districting simulation)

- IV. Resolution of disputed elections
 - A. Courts (*Bush v. Gore* and the 2000 election; pre- versus post-election litigation)
 - B. Congress (house judgments about election returns and member qualifications)

- V. Regulation of campaign finance
 - A. Political theory arguments for and against
 - B. Approaches
 1. regulatory
 2. disclosure-based
 3. public funding
 - B. Empirical literature
 1. incumbency, competitiveness
 2. corruption, access, conflict-of-interest
 3. equality and policy outcomes
 - C. Policy evaluation exercise: comparison of mandatory disclosure rules, disclosure deregulation, and mandatory anonymity (Bruce Ackerman and Ian Ayers's "donation booth", Chilean comparison)