Institutions and Arguments:

Simulating the U.S. Policymaking Process

Online Appendices

**Appendix A: Pre- and Post-Test**

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Sue wants the United States to increase taxes on the wealthy. Here are some steps that Sue can take (fill in the blanks):

Sue can join \_\_\_\_\_\_\_\_\_\_ and help it/them to lobby \_\_\_\_\_\_\_\_\_\_\_\_ to write laws that would tax the wealthy. Those laws are interpreted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. Interest groups/an interest group, Congress, the Supreme Court
2. The Supreme Court, Congress, interest groups/an interest group
3. Congress, the Supreme Court, interest groups/an interest group
4. Interest groups/an interest group, the Supreme Court, Congress
5. Laws are controversial; every law will have a group of people who disagree with it. When a new law is passed, which of the following is the most likely to file a lawsuit challenging the law?
   * 1. Speaker of the House
     2. The president
     3. An interest group
     4. The media
6. Which of the following is an example of a liberty-based argument or reason?
   * 1. It is not right to take away poor people’s land resources to enrich energy companies.
     2. Property rights are a freedom protected by the Constitution that shouldn’t be taken away.
     3. Eminent domain is a part of the Constitution, and we can’t get rid of it.
     4. Pipelines promote the local economy.
7. Which of the following is an example of an equality-based argument or reason?
   * 1. Americans should be able to donate unlimited amounts of money on political campaigns
     2. All Americans should have the freedom to spend money spend money in support of their favorite political candidates
     3. It is not fair for rich people with lots of rich friends to win elections because of their economic resources
     4. The government shouldn’t tell me how I spend my money; this is my choice
8. Which amendment to the U.S. Constitution is relevant to eminent domain?
   * 1. 4th
     2. 14th
     3. 5th
     4. 3rd
9. Which argument would a public utilities company like Duke Energy be most likely to give when lobbying Congress about eminent domain?
   * 1. People’s private property should never be seized, by either the government or private companies.
     2. People’s private property can be seized at any time, by either the government or private companies.
     3. Natural gas pipelines are harmful to the environment and they only benefit private corporations.
     4. Natural gas pipelines are public projects because they benefit households that need natural gas energy.
10. Eminent domain compensation is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
11. Civil right, because it is about allowing citizens to equally participate in public life
12. Civil right, because it is about freedom from interference by the government
13. Civil liberty, because it is about allowing citizens to equally participate in public life
14. Civil liberty, because it is about freedom from interference by the government

On a scale of 1-5 (1 being the least and 5 being the most):

1. Rate your knowledge of federal political institutions and how they interact.

1       2       3       4       5

1. Rate your interest in federal political institutions and how they interact.

1       2       3       4       5

1. Rate your knowledge about how the building blocks of political ideas, like “freedom” and “equality,” become political arguments.

1       2       3       4       5

1. Rate your interest in how the building blocks of political ideas, like “freedom” and “equality,” become political arguments.

1       2       3       4       5

1. Rate your knowledge of eminent domain.

1       2       3       4       5

1. Rate your interest in eminent domain.

1       2       3       4       5

**Appendix B: Simulation Lesson Plan**

Introduction (5 minutes)

Introduction to the idea of liberty versus equality and how these issues are often seen to be two major normative considerations underlying debates around civil rights and liberties, and American politics generally

* When we’re talking about civil rights and liberties, we often think about this tension between liberty (or freedom) and equality, and other ideas like order, safety, fairness, public goods, or rights.
  + In the 4th Amendment, for example, the freedom from unjust intrusion on your personal privacy is balanced against the need for the government to punish criminals and keep everyone safe
  + Another example is antidiscrimination laws like the Civil Rights laws of the 1950s and 60s
  + Another example is hate speech. The U.S. has mostly sided with liberty rather than equality on debates surrounding hate speech; the Court has said hate speech can only be limited if it is directly threatening or initiating violence.
  + In these cases, government institutions have to balance individual freedoms, like the freedom of expression, including the freedom to express racist views, with equality, like the expectation of equal treatment and non-discrimination, or order or safety, or human rights
* Today we’re going to navigate some of these debates together. The particular civil rights and liberties topic we will explore these questions through is eminent domain.
* The big takeaway from today is that for every civil right and liberty, there is a debate about how best to balance protecting the rights and liberties of some without harming equality or social order
  + And there are moral and pragmatic arguments on each side of these debates, but ultimately it is institutions such as Congress, the states, and the courts that decide these issues in the American political system.

Mini-Lecture on Civil Rights and Liberties and Review of Reading (10 minutes**)**

* Civil rights -
  + 1) guarantees that individuals can engage in activities central to citizenship or legal immigrant status,
  + 2) guarantees of due process and equal treatment under the law and
  + 3) guarantees of freedom from discrimination that would harm an individual’s status as an equal member of society
    - Ex. right to vote, right to petition the government, right to criminal defense, right to fair and speedy trial by jury
  + What’s due process? --- the right to legal protections against arbitrary deprivation of life, liberty, or property
* Civil liberties - freedom from unjust interference by the government or protections preventing the government from infringing on that freedom
  + Ex. freedom of speech, freedom of assembly, freedom of religion, right to bear arms
* There’s a lot of overlap between these two ideas, and some abilities of U.S. citizens could be considered both civil rights and civil liberties (ex. the right to petition the government is also a freedom to petition the government without the government preventing you from doing so)
  + For simplicity, rights require obligations by government and liberties establish boundaries on government
* The institutions that we’ve spent the semester exploring play important roles in protecting these rights and liberties
  + Congress can be a protector of civil rights and liberties or can infringe upon them by passing laws
  + The federal courts can act as protectors of civil rights and liberties, but they haven’t always done so
    - Federal judges’ lifetime tenure can give them the freedom to protect the civil rights and liberties of minorities even when it’s unpopular to do so, in a way that state legislatures, the president, and Congress often can’t do because of electoral pressures
* We talked about the concepts of negative and positive liberty earlier in the semester. Does anyone remember what these mean?
  + Do civil liberties correspond more closely to negative or positive liberty?
    - Negative liberty (property rights; search and seizure)
    - Civil rights correspond more closely to positive liberty

Simulation Explanation, Assigning Groups, Basic Issue Explanation (7 minutes)

* Your textbook talked about some civil rights and liberties issues that have been somewhat “resolved” in the courts and through legislation
  + (Civil Rights, women’s suffrage, affirmative action, etc.)
* Now let’s talk about some topics that haven’t been as thoroughly “resolved” through political institutions.
  + We’re going to play a game simulating political debates about these relatively unresolved and contentious civil rights and liberties and how they are adjudicated by the federal government.

First, some definitions: moral arguments are arguments about an idea of justice - what is the morally just solution, or what is right, based on various moral and political principles, such as equality or freedom

* Take these 2020 Democratic presidential candidates’ positions on health care, for example
  + Bernie Sanders proposed a Medicare for all plan whose argument is that everyone should have equal access to good healthcare provided by the government. This is an *equality*-based argument because it’s about equal access.
  + On the other hand, Pete Buttigieg argued for something called Medicare for all Who Want It, which wants to provide government-run health insurance but also allow people to continue to buy private health insurance. He said we should do this in order to allow Americans to have the *freedom* to choose their own health insurance

Now we’re going to analyze the role of both institutions and moral and political arguments by analyzing the issue of eminent domain.

* Eminent domain is the power of local, state, or federal government to seize private land or property for public use. The 5th Amendment’s “Takings Clause” requires that "just compensation" be paid if private property is taken for public use. But what does public use mean?
* The Supreme Court has mostly left this question up to the states, saying that in different climates and different political circumstances, “public use” will mean different things. The case *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago* (1896) incorporated the eminent domain part of the 5th Amendment to the states.
  + In recent years, states have used eminent domain to seize private land for natural gas pipelines built by private utility companies.
* The Supreme Court has expanded the definition of public use in recent years
  + In *Kelo v. City of New London* (2005), the Court ruled that the city of New London, Connecticut's taking of private property to sell for a private housing development qualified as a "public use" within the meaning of the Takings Clause.
    - The city, the Court said, was not taking the land simply to benefit a certain group of private individuals, but was following an economic development plan.
    - The Court decided that takings here qualified as "public use" despite the fact that the land was not going to be used by the public. In *Kelo*, the Court developed a "broader and more natural interpretation of public use as 'public purpose.'"
* Duke Energy, a private company, is currently building the Atlantic Coast pipeline in North Carolina, Virginia, and West Virginia. These states have been seizing private land for the project.
* Environmentalists and private landholders resist. In Southwest Virginia, for example, two women camped out for over a week in a tree on their property, protesting its seizure for a different pipeline, the Mountain Valley Pipeline.
* Protestors say it’s not public use because the profits from the natural gas and electricity sold to consumers will go to Duke Energy, a corporation, and not to the state or the people.
* Duke Energy says it will create jobs, although most of these jobs will be temporary construction jobs or permanent administration jobs centered around the pipeline’s terminals, not along the pipeline. Duke Energy also says it’s a public use project because it will use the natural gas to power electricity and heat homes in these states.
* Assign students to groups

Pre-Survey (5 minutes)

Simulation

Arguments (8 minutes)

* You have 3 minutes before we begin the simulation to write down as many arguments as you can think of on either side of this debate. What arguments can you think of for using eminent domain to build the pipeline? What arguments can you think of against using eminent domain to build this pipeline? Be prepared to share with the class.
* Students share with class and classify arguments (5 minutes)
  + Instructor writes on board
  + Some arguments for use of eminent domain for pipeline that students might come up with:
    - It’s for the public good/public project
      * This is a public good argument (a public good is a non-exclusive, non-rivalrous resource)
    - Job creation
      * This is kind of a public good argument too
    - People are being fairly compensated
      * This is basically an equality argument, or an argument based on fairness
  + Some arguments against use of eminent domain for pipeline that students might come up with:
    - It’s unjust infringement on property rights
      * This is a liberty/freedom argument
    - Compensation is not fair or market value
      * Fairness
    - The property being seized is often the property of the oppressed
      * This is an equality or justice (oppression) argument)
  + Ok, so let’s talk about what kinds of arguments each of these are (write on board and, with students, classify each one into what its basis is as a normative argument).

Legislation (5 minutes)

* First, Congress is going to legislate on this issue, while interest groups plan strategies and the Supreme Court watches.
  + Congress, you need to write a law that further refines eminent domain. In the law you pass, you can limit it or you can expand its power. You have 5 minutes to write a bill (it should be a 1-sentence summary of the bill) in each chamber of Congress.
  + While the chambers are debating, interest groups should be forming arguments with which to lobby Congress.

Senate and House each read their versions of the bill; instructor writes them on the board (1 minute)

Lobbying (4 minutes, including transition time)

* Interest groups send lobbyists to lobby Congress.
  + Interest group lobbyists, you have 1.5 minutes to lobby Congress. Make your argument in a few sentences.
  + Switch - the other lobbyist lobbies the other chamber – 1.5 minutes

Congress revises bill or keeps current version (3 minutes)

* Congress, you have 2 minutes to revise your bill if you would like based on what you’ve heard from the interest groups
* The two chambers meet together during this stage

Speaker of the House announces final bill (1 minute)

Litigation (3 minutes)

* *(If the law Congress passed was favorable to Duke Energy, the other group chooses the plaintiff, someone whose land will be taken; if the law Congress passed was unfavorable to Duke Energy, Duke Energy is the plaintiff.)*
  + Interest group (Duke Energy or the environmental interest group), do you think the law passed by Congress is unconstitutional? If so, select a plaintiff from your group and come up with a 1-minute argument as to why the law should be struck down by the Supreme Court. You’ll make this oral argument for the Supreme Court.
  + You have 3 minutes to come up with this argument.
  + Solicitor General and their legal team also plan a defense of the law.

Oral Arguments (3 minutes: 1 minute per group plus transition time)

* Oral arguments by the interest group that’s suing. The Solicitor General will defend the law for the federal government.
  + The case is called *Interest Group (or landowner) v. United States* or *Duke Energy v. United States*. So the arguments should be by the SG and an attorney representing the interest group

SCOTUS deliberates, votes, and announces its decision (5 minutes)

* Supreme Court, you have 4 minutes to decide which side to rule for.
* Supreme Court announces its decision – 1 minute

Debrief (5 minutes)

* Which arguments ended up winning - in any stage, from within Congress to lobbying Congress to arguing in front of the Supreme Court?
  + When they answer - what kinds of arguments was this?
* How do institutional structures influence how these issues are decided? --- should talk about partisanship in Congress, ideology and strategy in SC, lobbying rules, judicial review
* Does eminent domain most closely relate to a civil right or a civil liberty? -- civil liberty from infringement by the government
* The big takeaway from today is that for every civil right and liberty, there is a debate about how best to balance protecting the rights and liberties of some without harming equality or social order, and there are moral and pragmatic arguments on each side of these debates, but ultimately it is institutions such as Congress, the states, and the courts that adjudicate these issues in the American political system
* We’ve seen through these case studies how government institutions balance different concerns about freedom, order, and equality, and balance different preferences by different groups in society and within the federal government

Post-Survey (5 minutes)