

Civil Liberties and Political Institutions Simulation

Goals:

- Demonstrate how various political institutions and civil society interact over policy
- Apply themes from course to “real world” (Atlantic Coast Pipeline case study)
- Increase subject matter knowledge on a specific civil rights and liberties topic (eminent domain and land rights)
- Demonstrate the interactions between institutions and civil society, between institutions and ideas or arguments
- Evaluate the power of various arguments for and against a policy and how those arguments are deployed in politics

Overview (60 min. total):

- Pre-survey
- Introduce the topic (civil liberties and civil rights)
- Introduce the case study (eminent domain and the Atlantic Coast Pipeline)
- Students individually brainstorm arguments for and against the use of eminent domain in this case
- Groups convene: Senate, House, SCOTUS, Duke Energy (pro-pipeline group), anti-pipeline group
 - Each house of Congress debates the issue while interest groups form arguments (drawing from their lists they’ve made) for or against the use of eminent domain for the pipeline (also, environmentalist group comes up with a name for themselves)
- Lawmaking, lobbying by interest groups, petitioning SCOTUS, SCOTUS deciding on constitutionality
 - Interest group lobbyists lobby Congress (one group lobbies the House while the other lobbies the Senate, then they switch)
 - Each house of Congress writes a 1-sentence bill
 - Each chamber announces its version of the bill
 - The two chambers resolve the 2 versions of the bill, if they are different, in a conference committee (of two representatives from each house of Congress) (3 minutes) and then both houses vote
 - The Speaker of the House announces final bill
 - The losing side “finds” a plaintiff and draws from their list of arguments to form a 1-minute oral argument for the Supreme Court. The case is *Jones (plaintiff’s name) vs. U.S.* and is argued by the losing interest group for Jones vs. the Solicitor General for the U.S.
 - Each side gives oral arguments to the Supreme Court
 - SCOTUS makes a decision and votes, announces its decision
- Debrief, including about institutions, arguments, and subject matter
- Post-survey

Simulation Lesson Plan

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. You heard in the episode of the *Note to Self* podcast episode you listened to for today’s class how the courts often have to balance individual liberty (in the 4th Amendment case, the freedom from unjust intrusion on one’s personal privacy) and public order (in the 4th Amendment case, the need for the government to punish criminals and keep everyone safe). When we’re talking about civil rights and liberties, we often think about this tension between liberty (or freedom) and order or safety. We also sometimes see a tension between liberty or freedom and equality, as in antidiscrimination laws like the Civil Rights laws of the 1950s and 60s. In these cases, government institutions have to balance individual freedoms, like the freedom of expression, including the freedom to express racist views, for example, with equality, like the expectation of equal treatment and non-discrimination. 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. Today we're going to navigate some of these debates together.

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.

10 minutes - mini-lecture on civil rights and liberties (review of their reading for the day)

- 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)
- Congress can be a protector of civil rights and liberties or can infringe upon them.
- The federal courts can act as protectors of civil rights and liberties, but they haven't always done so. Federal justices' lifetime tenure and judicial independence 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 Isaiah Berlin's concepts of negative and positive liberty earlier in the semester. Does anyone remember what these mean? --- answer. Do civil liberties correspond more closely to negative or positive liberty? --- negative liberty. Right, and civil rights correspond more closely to positive liberty.
- What's incorporation? --- the application of civil rights and liberties from the Bill of Rights to state and local governments through court cases that cite the 14th Amendment, which says no state can "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- Let's briefly go over the Supreme Court's three-tiered system of judicial review over laws relating to civil rights and liberties.
 - Draw on board as we go along
 - What's the most stringent level? --- strict scrutiny. What's strict scrutiny? --- a standard by which a law is assumed to be unconstitutional by the Court unless it advances a "compelling state interest" and represents the least intrusive means of advancing that interest. Laws are given strict scrutiny if they include language about which classifications? --- Race, ethnicity, religion, creed, or national origin, or involves a fundamental right (*if they ask: First Amendment rights*)
 - What's the next-most stringent level? --- Intermediate scrutiny. What's intermediate scrutiny? --- the law is considered constitutional if it advances "an important government objective" and is "substantially related" to that objective. Laws are given intermediate scrutiny if they include language about which classifications? Classifications that aren't the "suspect classifications" but are nevertheless marginalized in society, such as sex (gender)
 - What's the least stringent level? --- the rational basis test. What's the rational basis test? ---- The law is assumed to be constitutional as long as its goals are clearly linked to its means (the way it goes about achieving those goals). Laws are given the rational basis test if they include language about which classifications? --- Economic class or income level, or certain other "disfavored" classifications

5 minutes - pre-survey

- What is the difference between a civil right and a civil liberty?
 - A) Civil rights pertain only to the states, while civil liberties are federally guaranteed
 - B) Civil rights are guarantees of equal ability to do activities that enable equal citizenship, while civil liberties are freedoms from infringement by the government
 - C) Civil rights are freedoms from infringement by the government, while civil liberties are guarantees of equal ability to do activities that enable equal citizenship
 - D) Civil rights are decided by the Courts, while civil liberties are decided by Congress
- Which institution(s) often get involved if a civil right or civil liberty is contested?
 - A) Congress
 - B) The Supreme Court
 - C) Interest groups
 - D) All of the above
- Which Amendment of the Constitution pertains to eminent domain?
- Don't go over answers

5 minutes - simulation explanation, assigning groups, basic issue explanation

Your textbook talked about some civil rights and liberties issues that have been “resolved” in the courts and through legislation (CRM, women’s suffrage, affirmative action, etc.)

Now let’s talk about some topics that haven’t been “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 is what is right, based on various moral and political principles, such as equality, freedom or liberty, stability or order, and just deserts (or what someone is rightly owed).

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

Split them into groups:

Congress group (split in to House and Senate) - approx. 8 House, 7 Senate (should be on opposite sides of the room)

Interest group on one side - approx. 8 people

Interest group on the other side – approx. 8 people (interest groups should be on opposite sides of the room)

SCOTUS - 9 justices

Solicitor General and their 2 staff attorneys – at least 3 people

Intro to simulation:

- 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” says 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, the use of eminent domain to seize private land for natural gas pipelines built by private utility companies has increased.
- 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 my area of Virginia, two women camped out for over a week in a tree on their property, protesting its seizure for the pipeline.

- 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.
- 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.
- You have **5 minutes** before we begin the simulation to write down as many arguments on either side of this debate. You should also note what types of arguments they are (are they equality arguments, order or stability arguments, liberty or freedom arguments, just deserts arguments, or another type of argument?). This is for your own purposes and I will not be collecting it.
- First, Congress is going to legislate on this issue, while interest groups plan strategies and the Supreme Court watches.
- Interest group 1 will be an anti- eminent domain group. Feel free to give your group a name.
- Interest group 2 will be Duke Energy, fighting for eminent domain so you can build the pipeline.
- 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. First, you have **4 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.
 - Each chamber announces its version of the bill (**2 minutes**), and interest groups send lobbyists to lobby Congress.
 - Interest group lobbyists, you have **1 minute** to lobby each chamber of Congress. It's illegal bribery to directly promise future campaign donations in exchange for political favors, but remember Duke Energy does have more resources to devote to lobbying and campaign donations. Duke Energy, you lobby the Senate, while the other interest group lobbies the House.
 - Switch - the other lobbyist lobbies the other chamber - **1 minute**
 - Chambers of Congress, you have **2 minutes** to revise your bills if you would like.
- The two chambers now have **3 minutes** to resolve the 2 versions of the bill.
 - What does the final bill decide? - **1 minute**: announcing final bill
- (*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 chooses the plaintiff, the state of North Carolina.*)
 - Interest group (Duke Energy/state of North Carolina or the other 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 have **3 minutes** to come up with this argument.
- **2 minutes** - oral arguments by the interest group that's suing. The Solicitor General will defend the law for the federal government.
 - The case would be *Interest Group (or landowner) v. United States* or *North Carolina (the Duke Energy group) v. United States*. So the arguments should be by the SG and an attorney representing the interest group
- Supreme Court, you have **3 minutes** to decide which side to rule for.
- **5 minutes** - debrief
 - 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?
 - Does eminent domain most closely relate to a civil right or a civil liberty? -- civil liberty from infringement by the government
 - 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
- **5 minutes** - post-survey
 - 1. Which institution(s) often get involved if a civil right or civil liberty is contested?

- A) The Supreme Court
 - B) Interest groups
 - C) Congress
 - D) All of the above
- 2. What is the difference between a civil right and a civil liberty?
 - A) Civil rights are decided by the Courts, while civil liberties are decided by Congress
 - B) Civil rights pertain only to the states, while civil liberties are federally guaranteed
 - C) Civil rights are freedoms from infringement by the government, while civil liberties are guarantees of equal ability to do activities that enable equal citizenship
 - D) Civil rights are guarantees of equal ability to do activities that enable equal citizenship, while civil liberties are freedoms from infringement by the government
 - 3. Which Amendment of the Constitution pertains to eminent domain?

5 minutes – closing/summary (brief recap about how the major themes from today connect to the lesson goals) and exit ticket (PollEverywhere slide of review question from today’s material)

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.