

Pol 306: Constitutional Law I: Supreme Court & the Constitution

Holman Room 38

10:00 - 10:50 am

Monday, Wednesday, & Friday

Fall 2018

Contact Information

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Assistant Professor

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Office hours: 11:00 am - 12:00 pm, Monday & Wednesday (or by drop in or appointment)

Course Description

This course familiarizes students with the powers the U.S. Constitution affords the branches of government and how the decisions of the U.S. Supreme Court have defined and shaped these powers. Specifically, we will examine how the decisions of the Court have impacted, among other things, the separation of powers, federalism, and interstate commerce. This also includes the exploration of the legal and political contexts under which the Court reached these decisions. We will trace particular legal doctrines, such as those that examine the interplay between the Congressional power to regulate interstate commerce and individual rights and liberties, those that offer the President war and emergency powers, and those that establish judicial power.

Upon completion of this course, I expect students to demonstrate:

1. A firm grasp of the derivation, scope, and limits of the powers that the U.S. Constitution grants our political institutions.
2. Knowledge of the relationship between constitutional interpretation and institutional power.
3. An ability to assess legal reasoning, analyze the legal arguments within, and understand how precedent shapes legal doctrine.
4. Recognition of extralegal influences that impact the Supreme Court and its decisions (e.g., public opinion, other institutional actors, etc.).
5. An ability to trace noteworthy constitutional arguments and the cases that shaped them.

Course Materials

The textbook for this course is recommended, but not required. If you plan to go to law school, or otherwise believe you will need a solid understanding of the US Constitution, it would be remiss to forgo purchasing – and subsequently reading! – the textbook. Moreover, students who read the book (in addition to class notes) are likelier to be successful than those who do not. That being said, no exam materials will come exclusively from the text.

This text is available at the bookstore. I strongly recommend obtaining the book used from an online retailer (e.g., <https://goo.gl/WWkNCI>) as this is likely to save you substantial costs. Additional course materials (such as Supreme Court decisions) are readily available online or will be disseminated electronically via the course’s Blackboard page.

- Epstein, Lee and Thomas G. Walker. 2016. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 9th edition. CQ Press.

Note that this is the ninth edition of the text. Constitutional law is always changing; earlier editions do not reflect recent changes in case law.

Course Requirements

EXAMS

There will be a midterm and a final exam in this course. Both will be comprised of multiple choice and short answer questions. The final exam will only include materials covered after the midterm. The midterm will be held during a regularly scheduled class meeting. The final exam will take place Friday, December 7 at 8:00 am (brutal, I know. I don’t pick the times).

WRITING ASSIGNMENTS

You will be responsible for producing two (2) written assignments throughout the semester. Much more information will be given about these assignments in class, but to preview:

- **Legal Brief:** You will select a case of interest, highlight the major details, identify the controversy, outline the interpretation and application of the Constitution in both the majority opinion and any concurrences or dissents, and briefly discuss any social, legal, and political implications of the ruling.
- **Persuasive Essay:** You will select a case of interest and make a balanced argument for why each side should win. Each side should receive equal space and credibility. Tone must be impartial, non-judgmental, conciliatory, and respectful. The reader should never recognize your “true” position. Your conclusion must present a compromise.

QUIZZES

There will be many short, in-class writing assignments – or “quizzes” – throughout the semester. These will be “pop” assignments in the sense that they are not scheduled or announced beforehand. The format will vary (i.e., some short answer, some group work, etc.). They will be used to assess

comprehension of course materials.

Your two (2) lowest scores will be dropped and the remainder will count for your grade. If you miss a quiz due to an excused absence, that will be one of your drop quizzes; this policy is reconsidered if you miss more than 2 quizzes due to excused absences. Absences will only be excused for daily assignment purposes if instructor is informed of the cause of the absence before the next scheduled class. In other words, if you miss a quiz on Monday, you must tell me before class on Wednesday that the absence should be considered excused.

PARTICIPATION

Participation is key in this course. Participation is defined as “verbal engagement by the student with others in the class (instructor and other students) of the learning material.” More concisely, students must speak in class, or otherwise show active engagement in day-to-day classroom learning. A few sure-fire ways to participate are to (1) ask questions during lecture, (2) answer questions when prompted by instructor, and (3) speak on behalf of your group when we engage in group activities.

At minimum, students must come prepared and be ready to discuss all relevant materials. Although I will not take attendance in this course, it is expected that you attend each session and voluntarily contribute. Participation will be based on both the quality and quantity of your contributions.

I, of course, recognize that some students are not as comfortable participating. Yet, given the impetus, many normally quiet students have well thought out comments. I do not like to “call on” students, but reserve the right to implement a system whereby students are equitably and, most importantly, randomly called on to participate. Such a procedure will ensure that all students will have equal opportunity to participate, but reduces issues that arise from implicit biases and student introversion.

Please note that the University requires that all students have a verified attendance at least once during the first two weeks of the semester for each course. *If attendance is not verified, you will be dropped from the course and any financial aid will be adjusted accordingly.* Please see <http://olemiss.edu/gotoclass> for more information.

Grades

Your class performance will be evaluated upon the following criteria:

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|-------------------------------|-----|
| Exams (2 @ 20% each) | 40% |
| Writing Assignments (2 @ 20%) | 40% |
| Quizzes | 10% |
| Class Participation | 10% |

The grading scale follows the University's Plus-Minus rubric (without the A- option):

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|----|---------|----|--------|
| A | 90-100% | | |
| B+ | 87-89% | B | 83-86% |
| B- | 80-82% | C+ | 77-79% |
| C | 73-76% | C- | 70-72% |
| D | 60-69% | F | 0-59% |

Course Policies

GENERAL STATEMENT

You are responsible for informing yourself of all departmental, college, and university policies governing your conduct in this course. This includes, but is not limited to, policies relating to plagiarism/academic integrity and the accommodation of students with documented disabilities.

COURSE COMMUNICATIONS

Updates and additional materials will be sent out via our course's Blackboard page. Please alter your Blackboard settings such that you are notified when announcements are posted.

INSTRUCTOR AVAILABILITY

If you have any questions, quips, queries, qualms, comments, or concerns, please contact me via email. Be certain to include "POL 306" in the subject line along with a substantive topic. Please include an appropriate salutation (e.g., please do not begin an email with "hey") and an email signature that includes your first and last name (so I know to whom I'm responding!). I will endeavor to respond to all email messages within 12 hours on weekdays and 24 hours on weekends. If you have not received a response within 24 hours, please resend your message. For time sensitive matters, resend your message after 12 hours.

I will be available immediately following class for one hour on Monday and Wednesday. All other office hours will be by appointment. If you would like to meet, please send a message with 2 or 3 suggested meeting times and I can confirm which works best for me.

ATTENDANCE POLICY

There is no official attendance policy in this course. That is, I do not take daily attendance, as I recognize there are dozens of reasons one may miss a given class. But, there are repercussions to absences. See both the Quizzes and Participation sections above for expectations and rules regarding attendance.

GRADE APPEALS

All grading concerns should be submitted via email with a concise statement expressing why you believe your grade should be altered. All concerns – arithmetic or otherwise – must be raised within *one week* of when the grade was posted. No grade challenges will be entertained after one week. I reserve the right to *reduce points* on any grade appeal.

ACADEMIC HONESTY

This course has a zero tolerance policy in regards to academic dishonesty. Academic dishonesty is defined as conduct that violates any of the following principles: (a) supplying or using work or answers that are not one's own (this includes mis-citing a source); (b) providing or accepting assistance with completing assignments or examinations beyond collaborative learning; or (c) interfering through any means with another's academic work. Collaborative learning (i.e., working or studying with your peers) in this course is encouraged, but if you study together, you must produce your own work. This includes not submitting verbatim or near-verbatim answers to assignments. To do so violates both the spirit and the letter of academic integrity. The penalties for dishonesty will vary from getting 0 points on an individual assignment up to getting a 0.0 or F grade for the entire semester. All instances of academic dishonesty will be reported to your college and department.

If you are not sure a certain action will be considered academically dishonest, it is in your best interest to assume it is until told otherwise. **Please feel free to ask if any action will be considered academic dishonesty in this course.** Such queries will not be held against you. And, remember that what may be acceptable in this course may be inappropriate in another, and vice versa. Additionally, consult the University *M Book* for more information.

STATEMENT ON DISABILITIES

The University of Mississippi is committed to the creation of inclusive learning environments for all students. If there are aspects of the instruction or design of this course that result in barriers to your full inclusion and participation or to accurate assessment of your achievement, please contact the course instructor as soon as possible. Barriers may include, but are not necessarily limited to, timed exams and in-class assignments, difficulty with the acquisition of lecture content, inaccessible web content or the use of non-captioned or non-transcribed video and audio files. You must also contact Student Disability services at 662-915-7128 so that office 1) provide you with an Instructor Notification form, 2) facilitate the removal of barriers and 3) ensure that you have equal access to the same opportunities for success that are available to all students.

All reasonable accommodations will be made in this course. I encourage students not only to take advantages of these services when appropriate, but to inform the instructor of any qualifying consideration *as soon as possible*. Accommodations for disabilities should be arranged well in advance of any student assessment. Please see University Student Disability Services for more information.

Course Schedule

Daily reading assignments are listed below. Reading assignments are listed according to the day on which the subject will be discussed. Thus, you should read the assigned material *prior* to the date listed. Note that some readings will be discussed across multiple class periods.

Table 1: Course Schedule

| Date | Topic & Readings |
|--------------|--|
| 20 August | Course Introduction |
| 22 August | The U.S. Constitution Epstein & Walker (henceforth EW) p. 3-11, 49-54, 722-732 Federalist Papers #78 |
| | The federal judiciary EW p. 11-23, 56-60 |
| 24 August | The federal judiciary How judges decide EW p. 23-42 |
| | The Judiciary |
| 27 August | Judicial review EW 61-86 |
| 29 August | Jurisdiction and justiciability EW 86-120 |
| | The Legislature |
| 31 August | Legislative independence EW 121-144 |
| 3 September | NO CLASS [LABOR DAY] |
| 5 September | Derivation and scope of power EW 144-180 |
| 7 September | Derivation and scope of power |
| | The Executive |
| 10 September | Executive power EW 183-206 |
| 12 September | Veto, appointment, and removal EW 206- 238 |
| 14 September | Executive privilege EW 238-268 |
| 17 September | Executive immunity EW 206-238 |
| 19 September | Foreign policy and affairs EW 263-267 |
| 21 September | NO CLASS |
| | DUE DATE: LEGAL BRIEF |
| 24 September | Foreign policy (cont.) Delegation and usurpation EW 268-289 |
| 26 September | Delegation (cont.) |
| 28 September | War and emergency powers EW 290-336 |
| 1 October | War and emergency powers (cont.) |
| 3 October | Midterm exam prep. |
| 5 October | MIDTERM EXAM |
| | The Commerce Clause |
| 8 October | What is commerce? |

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| | EW 415-438 |
| 10 October | What is commerce? (cont.) & |
| 12 October | Expansive commerce EW 438-469 |
| 15 October | Expansive commerce (cont.) Limitations on commerce EW 472-500 |
| 17 October | Limitations on commerce (cont.) Federalism |
| 19 October | Early federalism EW 343-363 |
| 22 October | Middle federalism EW 363-393 |
| 24 October | Modern federalism EW 393-414 |
| 26 October | Non-10 th Amendment federalism The Contract Clause |
| October 29 | Origins EW 572-584 |
| October 31 | Decline of the Contract Clause EW 584-604 |
| November 2 | Decline Current understanding The Takings Clause |
| November 5 | Introduction & Definitions EW 663-695 |
| November 7 | Limitations |
| November 9 | Public use EW 663-695 |
| | Executive interpretation of powers, modern (if we have time) |
| November 12 | Executive understanding of war power “Congressional Overreaching in Foreign Policy” by Dick Cheney |
| November 14 | 9/11 powers “9/11 Powers Report” by John Yoo |
| November 16 | NO CLASS DUE DATE: PERSUASIVE ESSAY |
| November 19 | NO CLASS [THANKSGIVING] |
| November 21 | NO CLASS [THANKSGIVING] |
| November 23 | NO CLASS [THANKSGIVING] |
| November 26 | Make up day |
| November 28 | Make up day |
| November 30 | Final exam prep |
| 7 December | FINAL EXAM |