

# **PLSC 305: Law & Policy in a Constitutional Democracy**

**Eastern Michigan University Department of Political Science**

**Winter 2018**

**Section 3; CRN 26600**

**ONLINE**

Instructor: Matthew J. Zalewski, J.D., M.A.

Office: 601 Pray-Harrod / 734-487-3113

(Note: This is the main office. I do not have an office on campus)

E-mail: mzalews1@emich.edu

Office Hours: By appointment.

## **COURSE DESCRIPTION**

Since the 2016 presidential election, it has become popular on both sides of the political spectrum to allege that the American political system is “rigged.” Some place blame for this on individuals within political parties or corporations who may have had an undue influence on the nominations process. Others point to the tone of media coverage for or against certain candidates. But this merely scratches the surface. More substantively, we see concerns about campaign finance, redistricting, term limits, Congressional procedures, the role of the states, judicial behavior, and the behavior of Congress with respect to nominations, and especially the Supreme Court. While Presidential candidates on both sides of the spectrum gave the impressions during their campaigns that a change at the top would fix it all, the reality is much more complex. Although the President enjoys extraordinary powers, very little about the system can be changed by the President alone. Rather, the current state of our system is the result of a complex and intricate set of institutional features at all levels and in all branches of government that are strategically exploited by players in the political system, and supported by a set of legal precedents giving legitimacy to the system that is in place – all of which contribute to what Barbara Sinclair has called “unorthodox lawmaking.” While much time is spent debating policy issues such as abortion, the economy, immigration, etc., these policy subjects are merely the tip of the iceberg, as the parameters for the debate on these issues are established very much by the legal and institutional structures of our political system. Regardless of whether one views this reality as evidence of a “rigged” system, one thing that is clear is that if change is desired, then it will take much more than simply changing who or which party controls the Presidency or Congress. Unfortunately, as many citizens tune out politics in non-presidential election years, they become disillusioned when their presidential choice does not live up to expectations, or more polarized when the “other” candidate fails to “heal” the nation, which ultimately reinforces the system.

The purpose of this class is to build a detailed understanding of the institutional design of Congress, the American judiciary, and state government, and how variations in institutional design as well as strategic interactions between the branches and levels of government affect policy outcomes and implementation. We will ask throughout whether the system is “rigged,” and if so why, or at least what might give that perception. We will also consider the prospects for changing the system, including evaluating the potential role of the American people to directly or indirectly affect the political system’s design. Furthermore, we will engage traditional presentations of these institutions as well as major theories of the policy process in an effort to assess whether and how academic theory reflects or enhances our understanding of real-world practices. The semester will culminate with all students crafting research projects that apply the institutional framework that we build during the term to current policy issues so as to understand the context in which those policies are being debated and to attempt to predict future policy outcomes.

This course will provide a solid foundation in principles and practices of U.S. government, law, and policy. It will provide excellent preparation for any person interested in careers in government, policy, administration, education, law, or who simply wish to be more informed citizens.

### **LEARNING OBJECTIVES**

The primary goals for this course are as follows:

- 1) Develop a substantive understanding of the institutions of U.S. government and policymaking, specifically the U.S. Congress, the federal and state judiciaries, and state governments.
- 2) Construct a theoretical framework for critically evaluating the American policy process and the consequences of institutional design and reform.
- 3) Apply these substantive understandings to a range of policy issues so as to understand the dynamics of the policymaking process, the legal-institutional context of contemporary issues in American policymaking, and to attempt to predict future policy outcomes.
- 4) Build proficiency in reading academic literature, including empirical social science studies.
- 5) Enhance writing, research, and critical analytical, skills by generating a research question on a current policy topic, evaluating that topic using the conceptual framework built in this class, and iteratively carrying out the research project.

## COURSE POLICIES AND RESOURCES

**Accessing the Course via Canvas:** This course is delivered entirely online through Canvas. To access the page, visit <http://canvas.emich.edu>. If you have any technical difficulties with Canvas, either use the “Help” link on the Canvas user dashboard, or contact the 24/7 Canvas Helpdesk at 844-326-6322.

**Course Format:** This course is designed to give you maximum flexibility in completing the course requirements. Rather than taking a week-by-week approach, this course adopts a “module” approach that is a hybrid of a traditional course schedule and an independent study. The syllabus is based on a full-semester schedule for a 3-credit class that meets twice a week, so if you want to treat this as a normal class, you should be completing two lectures (and related reading/assignments) per week, or one lecture plus one exam in weeks where there are exams. However, while there are hard deadlines for the paper-related assignments and the three exams, you have complete freedom to complete the readings, lectures, and quizzes leading up to the exam at your own pace. Material will be posted on a rolling basis throughout the semester, but I will work to have enough material posted so that those of you who wish to work ahead may do so.

**Module Structure:** Each of the 3 modules consists of the following components:

**Completion Dates:** I provide the dates during which you should be working on this module, if you wish to stay on pace as though this were a traditional course with weekly meetings. I STRONGLY recommend that you follow this approach. Trying to “cram” everything just before an exam is due will very likely not go well for you.

**Due Date for Quizzes and Exam:** This is the date by which ALL quizzes and the relevant exam for that module MUST be completed. You are free to finish early, but you must have the module completed by the exam date, or else you will be subject to late penalties as described in this syllabus.

**Lecture Slides & Podcasts:** The material for each topic will appear under this sub-heading. I will post PDF slides and a 10-15 minute “podcast” in mp3 format for each “Lecture” listed on the syllabus. The slides are intended to help pull together the topics and call out the most important material in the reading. My goal with the podcasts is to further emphasize key points, provide additional examples or explanations of material in the lecture slides, and/or provide tips for your quizzes and exams. To pass this class, you will absolutely need to be looking at the lecture slides and listening to the podcasts.

**Reading (and/or Video) Listed on Syllabus but not in Textbooks:** Any reading material designated on the syllabus as “On Canvas” will appear within each module under this subheading.

**Module Quizzes:** Each module will feature 2 or 3 quizzes that you may complete at your own pace within the module, but must turn in by the module due date.

**Module Discussion Board:** Each module will have its own designated discussion board. Participation in this discussion board is optional. However, ***if you have questions about the material, I expect you to use the discussion board FIRST, BEFORE you e-mail me.*** Chances are that, if you have a question, others in the class do as well. Also, if you post a question to the discussion board, it is possible that one of your classmates may be able to help you find the answer before I see the post, so please do use the discussion board generously. Likewise, before you post a question, consult the discussion board to see if anybody has already asked the question that you have. I reserve the right to post any privately-transmitted questions to the discussion board for everybody to see.

**Attendance & Participation:** I consider your work on your assignments to reflect your attendance in the course. There is no separate attendance/participation grade.

**Submitting Assignments:** All assignments are to be submitted via Canvas.

**Communicating with the Instructor:** Since this class is entirely online and I do not teach or have an office on the main campus, our interactions will be entirely through the course discussion board and via e-mail. ***I prefer for you to e-mail me directly as opposed to using the Canvas e-mail tool.*** I typically respond to e-mails either early in the morning or later in the evening, and generally try to acknowledge your e-mail within 24-hours of receipt, so please do make sure that you are giving me enough time to respond thoughtfully. Please note that university regulations require me to only communicate with students about the course through their official “@emich.edu” accounts. Therefore, please use your “@emich.edu” account when contacting me. If your question relates to scheduling or course policies, I suggest that you first consult the syllabus. Additionally, please note that although I am a licensed attorney, I cannot serve as your personal legal counsel, so I will not be able to engage requests for legal advice or representation.

**Accommodations for Students with Disabilities:** It is my goal that this class be an accessible and welcoming experience for all students, including those with disabilities that may affect their learning in this class. If you believe you may have trouble participating or effectively demonstrating learning in this course, please meet with me to

discuss reasonable options or adjustments. During our discussion, I may suggest the necessity of your contacting the DRC (240 Student Center; (734) 487-2470; [swd\\_office@emich.edu](mailto:swd_office@emich.edu)) to talk about academic accommodations. You are welcome to talk to me at any point in the semester, but it is best if we can talk at least one week prior to the need for any modifications. EMU Board of Regents Policy 8.3 requires that anyone wishing accommodation for a disability first registers with the Disabilities Resource Center (DRC) in 240 EMU Student Center, telephone: (734) 487-2470. Students with disabilities are encouraged to register with the DRC promptly as you will only be accommodated from the date you register. No retroactive accommodations are possible.

**Academic Dishonesty and Plagiarism:** Academic dishonesty will not be tolerated in this course. Section V.A of the Eastern Michigan University Conduct Code and Judicial Structure for Students and Student Organizations provides that “engaging in academic dishonesty in any form with respect to examinations, course assignments, research projects, grades, and/or academic records” is “subject to disciplinary action.” This includes “cheating, falsification, and plagiarism.” The full policy is available at <http://www.emich.edu/policies/policy.php?id=124&term=student%20conduct>. The library also offers a plagiarism tutorial: <http://www.emich.edu/library/help/plagiarism/>. Examples of academic dishonesty include, but are not limited to:

- Submitting a paper prepared by another person, in whole or in part, as your own.
- Submitting a paper for this course that is identical, or substantially similar, to one you submitted in another course.
- Copying the work of another, or assisting a person in copying your work.
- Including direct quotations or paraphrases without citing the source.
- Failing to cite a source from which you obtained an argument, idea, theory, hypothesis, data, statistical results, or any other material that you are using to support positions taken in your own written work, but which you did not generate based on your own analysis of the materials. [When in doubt, cite.]
- Reproducing lecture notes without properly citing the notes and instructor.
- Falsely citing a work as representing an argument that it does not.

Written assignments in this class may be subject to review by plagiarism-detecting software. Penalties for academic dishonesty will range from the student being assigned a grade of “0” for an individual assignment to a grade of “0” for the entire course. Incidents of dishonesty may also be reported to the Department and/or University, which may result in further disciplinary action as provided in the Student Conduct Code.

**University Writing Center:** The University Writing Center (115 Halle Library; 487-0694) offers one-to-one writing consulting for both undergraduate and graduate students. Students can make appointments or drop in between the hours of 10 a.m. and 6 p.m.

Mondays through Thursdays and from 11 a.m. to 4 p.m. on Fridays. The UWC opens for the Winter 2017 semester on Monday, January 9, and will close on Thursday, April 20. Students are encouraged to come to the UWC at any stage of the writing process.

The UWC also has several satellite locations across campus (in Owen, Sill, Marshall, Porter, Pray-Harrold, and Mark Jefferson). These satellites provide drop-in writing support to students in various colleges and programs. The Pray-Harrold UWC satellite (rm. 211) is open Mondays through Thursdays from 11 a.m. to 4 p.m. The locations and hours for the other satellites can be found on the UWC web site: <http://www.emich.edu/uwc>. UWC writing consultants also work in the Academic Projects Center (116 Halle Library), which offers drop-in consulting for students on writing, research, and technology-related issues. The APC is open 10 a.m. to 5 p.m. Mondays through Thursdays. Additional information about the APC can be found at <http://www.emich.edu/apc>. Students seeking writing support at any location of the University Writing Center should bring a draft of their writing (along with any relevant instructions or rubrics) to work on during the consultation.

**University Policies:** For more information about University policies, please visit the Student Handbook at: <http://www.emich.edu/studenthandbook/>.

**Withdrawal Deadlines:** The last day to withdraw from this class for a 100% refund is January 12, 2018. The last day for a “W” grade (no refund) is March 21, 2018.

### COURSE TEXTS

#### **Required Books:**

Baum, Lawrence. 2015. *The Supreme Court, 12<sup>th</sup> Ed.* Thousand Oaks: Sage/CQ Press.

Moncreif, Gary and Peverill Squire. 2014. *Why States Matter: An Introduction to State Politics.* Lanham, MD: Rowman & Littlefield.

Sinclair, Barbara. *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress.* Thousand Oaks: Sage/CQ Press. (You may choose the 4<sup>th</sup> edition (2011) or 5<sup>th</sup> (2017).

**Supplemental Readings:** Additional materials referenced in the schedule of readings will be made available on the course Canvas page.

## COURSE REQUIREMENTS AND GRADING

This course will be graded on a points system (Points Earned divided by Points Possible). A summary of course requirements and associated point totals appears below.

<u>Assignment</u>	<u>Due Date</u>	<u>Points</u>
Quizzes (7 total, drop 2 lowest)	During Modules	50 (10 pts each)
Exam #1	Fri, Feb. 9	80
Paper Outline & Bibliography	Fri, Mar. 9	50
Exam #2	Fri, Mar. 16	80
Final Paper	Fri, Apr. 13	100
Exam #3 (Final Exam)	Fri, Apr. 20	100
		460

**Bonus Point Opportunity - 2 lowest quizzes convert to bonus points:** While your two lowest quizzes will not count against you, they *can* help you, as I will simply add whatever points you earn on those quizzes to your final grade as bonus points. So, even though you can't be hurt by getting low scores on two quizzes, it is to your advantage to take them seriously and do well so that you can get as many as 20 bonus points added to your final score!

**Grading Scale:** The following scale will be used to assign final course grades:

A	94-100%	C	76-74%
A-	93-90%	C-	73-70%
B+	89-87%	D+	69-67%
B	86-84%	D	66-64%
B-	83-80%	D-	63-60%
C+	79-77%	F	0-59%

If your final class percentage falls within 1% of the next-highest grade tier, I will automatically consider whether your course performance merits a "bump-up" to the next-highest tier. My decision will be based on an individualized assessment of your effort throughout the semester, whether your overall record is one of improvement, your engagement in the course, communication with me, and responsiveness to my feedback.

### **Late Work Policies:**

**Quizzes, Exams #1 & #2, and Outline/Bibliography:** All Module Quizzes and the related Exam for the module MUST be turned in by the REQUIRED deadline

(Eastern Time). Any quizzes / exams turned in after the Exam deadline will be reduced by 1 step (e.g. B becomes a B-) for every 6 hours that it is late. The same policy applies for the Outline/ Annotated Bibliography.

**Final Paper, & Exam #3:** Late final papers and final exams will NOT be accepted

Exceptions to the late work policy may be granted only for documentable emergencies, religious observances, extended jury/military service, or other circumstances recognized by the University. If you cannot complete an assignment on time and have a legitimate excuse, you must contact me before the assignment is due or as soon thereafter as is possible. I will not look favorably upon highly-delayed retroactive requests for deadline extensions (e.g. attempting to submit late work at the end of the semester without prior arrangements).

**Quizzes:** You will take 7 short quizzes related to the reading material. These are indicated on the syllabus, occurring after about every 2-4 lectures, except where an exam is scheduled instead. I expect that you will take these quizzes only after you have completed the relevant reading and lectures. You will be limited to 30 minutes per quiz. Therefore, you will have time to take it on an “open note” basis, but you likely will not finish if you haven’t already looked at the material enough to know where to find the answers. The goal of these quizzes is to keep you on track on with the syllabus, and help you focus on key concepts. These may include any or all of multiple choice, true/false, or short answer questions. They will be worth 10 points each. Your grade will be based on the best 5 of 7 quizzes. However, whatever points you earn on your 2 lowest quizzes will be added to your final score as bonus points, so it is to your advantage to excel on all of the quizzes. Even though two quizzes are dropped you are required to complete all 7 quizzes. Each quiz will not open until you have completed the one before it, and you will not be able to open the exam until you have completed the last quiz before the exam.

**Exams:** You will take 3 essay exams in this class. Exams 1 and 2 are non-cumulative. Exam 3 will include a part dedicated to Module 3 and a cumulative part.

**Final Paper (including Outline & Annotated Bibliography):** You will write a 6-8-page paper on a current issue or policy in American politics that is being engaged by Congress, the judiciary, and at least one or more states. You will be expected to assess the legal-political history of the issue, and analyze how actions taken at each level of government are presently shaping the policy area. To help you develop your paper, you will turn in a preliminary Outline and Annotated Bibliography so that I can give you feedback prior to the final paper. Full details about this assignment are available via Canvas.

**SCHEDULE OF TOPICS, READINGS, AND ASSIGNMENTS**

<b><u>LECTURE</u></b>	<b><u>TOPIC</u></b>	<b><u>READING</u></b>
<b>MODULE 1: THE POLITICAL CONTEXT OF LAW &amp; POLICY; <u>UNORTHODOX LAWMAKING IN CONGRESS</u></b>		
<b>Completion Dates: January 3 - February 9</b>		
<b>REQUIRED Completion of Quiz 1, 2, 3, and Exam #1: Friday, February 9, by 11:59pm</b>		
1	Syllabus and Course Introduction	None
2	Thinking About Making Policy Happen: Theories of the Policy Process	On Canvas: Smith & Larimer, Ch. 5
<b>QUIZ 1 (Lectures 1 &amp; 2)</b>		
3	Parties and Ideology in the Public and Congress	On Canvas: Green et. al., Ch. 8
4	Congressional Elections; Campaign Finance	On Canvas: Loomis & Schiller, Ch. 6
<b>QUIZ 2 (Lectures 3 &amp; 4)</b>		
5	Legislating in the House of Representatives	Sinclair, Ch. 1 & 2
6	Legislating in the Senate	Sinclair, Ch. 3
7	Conferences and Omnibus Legislation	Sinclair, Ch. 4, 5
<b>QUIZ 3 (Lectures 5, 6, &amp; 7)</b>		
8	Agenda Setting in Congress	Sinclair, Ch. 6
9	The Affordable Care Act in Congress	Sinclair, Ch. 7 (8 in 4 <sup>th</sup> ed.)
<b>EXAM #1: Module 1 Due Date: Friday, February 9, 2018 at 11:59pm</b>		

**MODULE 2:  
THE FEDERAL COURTS AS POLICY MAKERS**

**Completion Dates: February 12 - March 16**

**REQUIRED Completion of Quiz 4, 5, and Exam 2: Friday, March 16, by 11:59pm**

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|----|---|--|
| 10 | The Structure of the U.S. Court System & Context of the Supreme Court | Baum, Ch. 1 & Ch. 5<br>Documentary: <i>The Supreme Court</i> |
|----|---|--|

Access the documentary here:

<https://www.c-span.org/series/?theSupremeCourt>

**QUIZ 4 ("Lecture" 10 - Documentary)**

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|----|--|-------------|
| 11 | Structure of the U.S. Court System; Staffing the Supreme Court | Baum, Ch. 2 |
| 12 | Supreme Court Agenda Setting                                   | Baum, Ch. 3 |
| 13 | Supreme Court Decision Making                                  | Baum, Ch. 4 |

**QUIZ 5 (Lectures 11, 12, & 13)**

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|----|--|--|
| 14 | International and Foreign Law in Supreme Court Decision Making; Implementing Judicial Policy | Baum, Ch. 6<br>On Canvas:<br>Simon (2013)                  |
| 15 | Policy Case Study #1:<br>The Affordable Care Act in the Courts                               | On Canvas:<br><i>NFIB v. Sebelius</i>                      |
| 16 | Policy Case Study #3:<br>Gun Rights and Gun Control  | On Canvas:<br>Tribe & Matz, Ch. 5<br><i>D.C. v. Heller</i> |

**EXAM 2: Module 2, only  
Due Date: Friday, March 16, 2018 by 11:59pm**

**MODULE 3:  
STATE POLICYMAKING AND INFLUENCE ON FEDERAL LAW & POLICY**

**Completion Dates: March 19 - April 20**

**REQUIRED Completion of Quiz 6, 7, and Exam 3: Friday, April 20, by 11:59pm**

17	The Role of the States in a Federal Constitutional Democracy	Moncreif & Squire, Chs. 1 and 2
18	State Legislatures and Governors	Moncreif & Squire, Ch. 3
19	State Court Campaigns & Behavior	Moncreif & Squire, Ch. 3 (continued) On Canvas: Hall (2001) Hall & Zalewski, Ch. 4

**QUIZ 6 (Lectures 17, 18, & 19)**

20	State Campaigns & Elections	Moncreif & Squire, Ch. 6
21	Direct Democracy	On Canvas: Gerber et. al. (2004) Lewis (2011) MI Dept of State (2015)
22	State Policymaking & Policy Diffusion	Moncreif & Squire, Ch. 4 On Canvas: Baybeck (2011)

**QUIZ 7 (Lectures 20, 21, & 22)**

23	State Policy and Influence on Federal Policy	Moncreif & Squire, Ch. 5
24	State Attorneys General as Strategic Litigants in the Federal System	On Canvas: Zalewski article
25	Policy Study: States & Environmental Policy	On Canvas: Nolette, Ch. 6

**EXAM #3: Cumulative**

**Due Date: Friday, April 20, 2018 by 11:59 pm**

**Bibliography of Supplemental Course Materials (On Canvas)**

- Baybeck, Brady, William D. Berry, and David A. Siegel. 2011. "A Strategic Theory of Policy Diffusion via Intergovernmental Competition." *Journal of Politics* 73(1): 232-247.
- Gerber, Elisabeth R., Arthur Lupia, and Mathew D. McCubbins. 2004. "When Does Government Limit the Impact of Voter Initiatives? The Politics of Implementation and Enforcement." *Journal of Politics* 66(1): 43-68.
- Green, Donald, Bradley Palmquist, and Eric Shickler. 2002. *Partisan Hearts & Minds: Political Parties and the Social Identities of Voters*. New Haven: Yale University Press.
- Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *The American Political Science Review* 95(2): 315-330.
- Hall, Melinda Gann and Matthew J. Zalewski. 2017. "Campaigning for the High Court Bench." In *Judicial Elections in the 21<sup>st</sup> Century*. Ed. C.W. Bonneau and M.G. Hall. New York: Routledge.
- Lewis, Daniel. 2011. "Bypassing the Representational Filter? Minority Rights Policies Under Direct Democracy Institutions in the U.S. States." *State Politics & Policy Quarterly* 11(2): 198-222.
- Loomis, Burdett A. and Wendy J. Schiller. 2016. *The Contemporary Congress, 6<sup>th</sup> Edition*. Lanham: Rowman & Littlefield.
- Michigan Department of State. 2015. "Initiative and Referendum Petitions."
- Nolette, Paul. 2015. *Federalism on Trial: State Attorneys General and National Policymaking in Contemporary America*.
- Simon, Stephen A. 2013. "The Supreme Court's Use of Foreign Law in Constitutional Rights Cases." *Journal of Law and Courts* 1(2): 279-301.
- Smith, Kevin B. and Christopher W. Larimer. 2017. *The Public Policy Theory Primer*. Boulder: Westview Press.
- Tribe, Laurence, and Joshua Matz. 2014. *Uncertain Justice: The Roberts Court and the Constitution*. New York: Picador.