

PLSC 312: Constitutional Law: Institutions & Process

Instructor:	Professor Pyle	Section:	10075
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COURSE DESCRIPTION & PURPOSE:

In the summer of 1787, fifty-five men, all of them considered the best and brightest, began deliberations and negotiations concerning the reform of the deficient Articles of Consideration. In the opinion of some, their actions were illegal and many former patriots like Patrick Henry indicated that they “smelt a rat”. Their stated purpose was to revise the Articles and the relationship between the national government, the states, and the rights of individuals. In the end, they decided to do away with the Articles and constructed a novel form of constitutional government based on the separation of powers, checks and balances, federalism, pluralism and individual rights. In essence, the Constitution represents the embodiment of the colonial experience, dissatisfaction with the Articles and the fusion of various ancient and enlightenment political theory. However, considering the Constitution’s importance and basic role in structuring the contours of American society, it is relatively brief and often vague. As a result, many political, legal, social, and philosophical debates that began at the convention continue to resurface. In addition, many questions that are not directly addressed by the Constitution are placed continuously on the social, legal, and political policy agendas. Ergo, the Constitution may best be described as a dynamic and evolving political philosophy that continuously influences the resolution of political and social debates. This begs a question: Who should resolve or decide these debates?

The Constitution can be divided into two primary sections. They include the original body of the Constitution and various amendments (i.e., Bill of Rights). The main focus of this course is the former. This course deals with the Constitution’s allocation of governmental power within the national government (i.e., separation of power and checks and balances) and the national government’s relationship with state and local governments (i.e., federalism) as well as individuals (e.g., property rights). Accordingly, the course’s primary focus is on Articles I-VI and the 10th as well as the 14th Amendments of the Constitution. On the surface, this portion of the Constitution may not seem important, interesting or as exciting as the Bill of Rights and similar subsequent amendments. This is simply not the case. In a very real sense, these sections of the Constitution go a long way in influencing, if not determining, the content, character and nature of American government and the policies it adopts and supports.

In simple terms, the Constitution can be viewed as a set of formal institutions or rules that determine outcomes. However, for this simple notion to be true, the Constitution must be unambiguous concerning the “correct” or “true” powers and functions of the judicial, legislative, executive branches of government and their interactions with individuals as well as state and local government. It does not take a great leap of faith to realize that the Constitution cannot by itself resolve all the conflicts it was designed to address as well as those it could not foresee. Instead, the Constitution requires at least interpretation and, at times, augmentation. For this reason, to understand Constitutional law, it is necessary to discern how institutions (i.e., Supreme Court, Congress, States and the People) use the Constitution as a starting point for the resolution of political, legal, and social questions.

Consequently, our first task will be to investigate the various ways an unelected and unrepresentative Supreme Court interprets the Constitution. This task will be the orienting focus for the entire course. In essence, we will discover that the justices are political philosophers and policy-makers who use modes of constitutional interpretation and the process of judicial review to bring the Constitution to life. We will also find the Supreme Court is not the only actor who participates in constitutional construction. Once we understand judicial process and modes of constitutional interpretation, we will turn our focus to a critical analysis of the development and evolution of various substantive areas of Constitutional law that include the separation of powers, checks and balances, federalism and economic liberty. To that end, we will view law as case law as well as a political, historical, and philosophical process.

Notes about electronics in class:

- 1) NO CELL PHONES UNLESS THERE ARE EXTRAORDINARY CIRCUMSTANCES (I.E., SICK RELATIVE)
- 2) NO TEXTING IN CLASS
- 3) COMPUTERS MAY BE USED FOR NOTE TAKING AND CLASS RELATED ACTIVITIES – FACEBOOK AND OTHER SOCIAL NETWORK SITES AS WELL AS EBAY ET AL. ARE NOT CLASS RELATED.
- 4) VIOLATIONS OF THESE POLICIES WILL RESULT IN POINTS BEING DEDUCTED FROM YOUR PARTICIPATION GRADE (10% REDUCTION PER INFRACTION-Yes I am serious).

REQUIRED TEXTS: The following book is required reading in this course.

Epstein and Walker. 2014. *Constitutional Law for a Changing America*. 8th Edition, CQ Press: Washington.

The Federalist – Gideon Edition.

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788

Three additional notes: 1) There are outside readings listed in the syllabus. I will also address numerous topics and subjects outside the text and the readings. Accordingly, if you choose not to come to class, your grade will suffer. 2) The reading for this course is relatively light but it is not easy. To do well in this course, you will have to prepare for every class by reading once before class and possibly a second time after class. 3) **I reserve the right to provide additional material.** 4) **You must take notes or the exams will be very difficult.**

STUDENT RESPONSIBILITIES: Again, the required reading for this course is limited. As such, students are expected to keep up with the assigned readings and prepare for each class. This means coming to class prepared to follow the lecture, ask questions, and engage in class discussions. To help you with preparation and participation, I will take attendance and administer short quizzes when necessary. Students are responsible for all the materials presented in the lectures and the texts. While the lectures and the texts will often overlap, some material will be exclusive to either source. Thus, to perform well on the exams, it is essential that you attend class, take notes, and do the required readings. To help with class preparation, I will assign cases to three groups of students. Those students will prepare short case briefs and reflection assignments for those cases. Students are required to do 5 assigned cases and may “pass” on one of the six total assigned cases. Students who do all six of their assigned cases will receive extra credit. When your assigned case is being discussed, you will be expected to answer questions in class. Case briefs and reflections will be discussed the first week of class and **they must be** turned-in on the date they are due. Period. Final grades will be determined as follows:

1) Class Participation & Attendance (I will call on Students)	10%
2) Case Briefs and Reflections (6 – 1 Pass)	10%
3) First Midterm Examination -- With Take Home	30%
4) Second Midterm Examination- With Take Home	25%
5) Final Exam - With Take Home	25%

These percentages are not necessarily fixed. **I will reward improvement.**

Students are required to take the examinations and turn in written work on the dates given in the course outline and in class. Participation will be discussed the first week of class (points will be awarded for active participation in class (i.e., make yourself known to me). I will not take attendance every day but I will on multiple occasions throughout the semester. Those with reasonable excuses will not lose points. I have given people zero points for class participation so you should not view it as a free gift. I do not like to give

makeup exams and I will not give one unless you notify me at least one class period in advance and have a valid excuse that can be verified. I also understand that emergency situations may arise. These will be dealt with on an individual basis. Unless otherwise specified, if you hand in the take home question or essay late, it will be penalized at the rate of one letter grade a day (e.g., A becomes a B). I am very understanding and accommodating when it comes to special needs and the necessity to miss class because of religious or personal reasons; nevertheless, I cannot be understanding unless you notify me about the reason for your absence or special needs.

Finally, please come and meet with me during my office hours or by appointment to discuss any questions, problems, or difficulties related to the course or anything else. I am more than willing to help you in any way I can. However, I cannot help you unless you ask.

Grading Scale

Grading Scale will be as follows:

A	100-94
A-	93-90
B+	89-87
B	86-84

B-	83-80
C+	79-77
C	76-74
C-	73-70

D+	69-67
D	66-64
D-	63-60

A Brief Word of Warning

In addition to completing the required assignments on time, students will be required to answer any and all questions *in their own words*. That is, cutting and pasting answers from any source, without proper citation, is a form of plagiarism and will not be accepted. Any assignments that are completed in this way will **NOT** be given credit and can result in disciplinary action by the University. Answers that are copied, with proper citation, will not receive full credit. Please see the University's policy on plagiarism and academic dishonesty at http://www.emich.edu/studentconduct/facultylinks/academic_integrity.php Judicial Services defines plagiarism as "*Plagiarism* - deliberate and knowing use of someone else's work or ideas as one's own. Examples of plagiarism are: quoting a source verbatim, or paraphrasing text from a given source, without properly citing the source; turning in a research paper that was written by someone else; or in any other way passing off someone else's work as one's own; or failing to give credit for ideas or materials taken from someone else." The Halle Library site contains more information about plagiarism and integration of sources at <http://www.emich.edu/library/help/integratingsources.php>

If you need assistance for any reason please contact me directly

COURSE SCHEDULE: We will follow this outline as closely as possible. Any changes in the dates of the lecture topics and examinations will be announced at least one week in advance. It is a good rule of thumb that we will cover about three or four cases a class period. I will indicate when we will cover outside readings and when the groups will do their case briefs.

SEPTEMBER:

4-11 Housekeeping and Introduction (Well not so much) – <http://www.gpoaccess.gov/constitution/browse2002.html#2004>

Constitutional History and Principles: Method and Madness - Pages 3-11 & Appendix 1

Other Materials:

- 1) Federalist 10 <http://www.yale.edu/lawweb/avalon/federal/fed.htm>
- 2) Federalist 51 <http://www.yale.edu/lawweb/avalon/federal/fed.htm>

- 3) Federalist 23 http://avalon.law.yale.edu/18th_century/fed23.asp
- 4) Centinel 1 <http://www.constitution.org/afp/centin01.htm>
- 5) Brutus # 1 <http://press-pubs.uchicago.edu/founders/documents/v1ch8s13.html>

11-16 Supreme Court and Judicial Process: Interpreting the Contract's Contours - Chapter 1 & Appendixes 7 & 8

Other Materials:

- 1) Justice Scalia and Breyer Video <http://www.c-spanvideo.org/program/RoleofJ>
- 2) *Ashwander* (BRANDEIS concurring) <http://supreme.justia.com/us/297/288/case.html>

18-23 (Brief Due on the 18) Judicial Power and Constraints: Understanding the Court - Section II & Chapter 2

Other Materials:

- 1) Federalist 78-79 http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788
- 2) Brutus 11 <http://www.liberty-page.com/foundingdocs/antifedpap/brutus/11.html>
- 3) Federalist 80 http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788

Group 1: Marbury v. Madison http://www.oyez.org/cases/1792-1850/1803/1803_0/

25 Issue 1: Understanding Standing; Same Sex Marriage and the Power of the US Supreme Court. All Read

http://www.oyez.org/cases/2010-2019/2012/2012_12_144

OCTOBER:

30-7 (Briefs due on the 2nd) The Character of Congressional Power: Taming the Voice of the Beast - Chapter 3

Other Materials:

- 1) Federalist 52-53, 57 http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788
- 2) Federalist 62-64 http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788
- 3) Highlighted Cases:
 - a. *Group 2: Katzenbach* http://www.oyez.org/cases/1960-1969/1965/1965_22_orig/
 - b. *Group 3: US Term Limits* http://www.oyez.org/cases/1990-1999/1994/1994_93_1456/

Review for First Examination

9 FIRST MIDTERM EXAMINATION

14-21 (Briefs due on 16) The Executive: Unlimited Power and Weaknesses in One Office - Chapter 4

Other Materials:

- 1) Federalist 68-70 & 74 http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788
- 2) Highlighted Cases
 - a. *Group 1: Clinton v. NY* http://www.oyez.org/cases/1990-1999/1997/1997_97_1374/

- b. *Group 2 Clinton v. Jones* http://www.oyez.org/cases/1990-1999/1996/1996_95_1853/

21 Issue 2: Unitary Power of the President; The Power to go alone.

<http://www.justice.gov/olc/2011/authority-military-use-in-libya.pdf>

<http://www.justice.gov/olc/warpowers925.htm>

23-28 (Briefs due on the 28th) Separation of Powers: Creating a Self-Checking Government - Chapter 5
The Story of *Brown v. Bd.* (1954)

Other Materials:

- 1) Federalist 51 http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788
- 2) *Group 3: Brown* (1954)
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&navby=case&vol=347&invol=483&friend=oyez>
- 3) Highlighted Cases:
 - a. *Group 1: Chadha* http://www.oyez.org/cases/1980-1989/1981/1981_80_1832/
 - b. *Group 2: Boumediene v. Bush*

NOVEMBER:

30-6 (Briefs due on the 4) Federalism: The Unending Struggle to Define American Government. - Section III & Chapter 6

Other Materials:

- 1) Federalist Paper 45-46 & 85
http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788
- 2) Highlighted Cases
 - a. *Group 3: New York v. US* http://www.oyez.org/cases/1990-1999/1991/1991_91_543/
 - b. *Group 1: Alden v. Maine* http://www.oyez.org/cases/1990-1999/1998/1998_98_436/
 - c. *Group 2: Arizona v. US* http://www.oyez.org/cases/2010-2019/2011/2011_11_182

11 SECOND MIDTERM EXAMINATION

13-20 (Briefs due on the 18 and 20th) The Commerce Clause: The unlikely Fount of Central Governmental Power - Chapter 7

Other Materials:

- 1) *Group 3: Daniel v. Paul*
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=395&invol=298>
- 2) Highlighted Cases:
 - a. *Group 1: Lopez* http://www.oyez.org/cases/1990-1999/1994/1994_93_1260/
 - b. *Group 2: Raich* http://www.oyez.org/cases/2000-2009/2004/2004_03_1454/
 - c. *Group 3: Heart of Atlanta* http://www.oyez.org/cases/1960-1969/1964/1964_515/

25 Issue 3: Federal Police Power and the Affordable Healthcare Act: Commerce or Tax
National Federation of Independent Business v. Sebelius http://www.oyez.org/cases/2010-2019/2011/2011_11_400

December

- 2-4 (Briefs due on the 4th) Economic Substantive Due Process: Reading Between the Lines (Gateway to Civil Substantive due process? - Chapter 10)
- 1) Highlighted Case:
- a. Group 1: *BMW v. Gore (not that one)* http://www.oyez.org/cases/1990-1999/1995/1995_94_896/
 - b. Group 2: *Lawrence v. Texas* http://www.oyez.org/cases/2000-2009/2002/2002_02_102/
- 9-11 (Briefs due on the 11) Zoning and Taking: Government and Individual Property Rights - Chapter 11
- Other Materials:
- 1) Highlighted Cases:
- a. Group 3: *Kelo et al.* http://www.oyez.org/cases/1990-1999/1995/1995_94_896/

FINAL EXAMINATION: Dec 18 9-10:30am