

POLS 225
Tu/Th 10:00-11:50, MI 208
Office: M-I 214

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Office Hours: M 11:05-12:15, 1:30-2:30; Tu/W by appt; Th 9-9:45, 12-1; F by appt
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US Constitutional Law Spring 2017

This course provides an introduction to the study of law and the judicial process, with special emphasis on legal questions pertaining to the judicial, legislative, and executive powers in the federal government, as well as intergovernmental relations; federalism; economic and substantive due process; equal protection as it pertains to race and gender; freedom of speech; and freedom of religion. It introduces students to basic concepts in American Constitutional law, including the history and development of the Constitution, theories and practices of constitutional interpretation, and the historical context of the cases and controversies of the Supreme Court. The focus of the course is a study of the development of Constitutional jurisprudence in the United States from the founding to the present. In analyzing this historical trajectory, we will place special emphasis on the judiciary as a political actor embedded in and acting upon its political context.

In addition to this legal and political history of Constitutional jurisprudence, the course explores two additional areas. First, the course begins by exploring legal theory about what the law *is* – its nature, scope, and function – and how the law is *interpreted*. This constitutional and legal theory will inform our study of the development of the Constitution and constitutional law. Second, the final section of the course explores the function of the law in constructing and reproducing hierarchies in the United States, offering a critical perspective on Constitutional jurisprudence and on the broader role the Constitution and Supreme Court play in American society.

Learning Objectives:

- Develop a critical analysis of the role the Constitution and Supreme Court play in US society
- Understand the historical development of the Constitution and its interpretation
- Acquire skills for reading and analyzing case law in its political context
- Engage in legal analysis and reasoning in written form
- Foster an informed perspective on the possibilities and limits of Constitutional decision-making
- Grasp the contested nature of the nature, scope, and function of law and of the Constitution
- Improving the ability to engage in dialogue and debate through discussions in class and various modes of writing for class
- Think more systematically and analytically about one's own political beliefs

Evaluation

- Class citizenship: 20%
- Class blog: 25%
- Essay Exams: 30% (2 take-home assignments at 15% each)
- Final project: 25%

Assignments

- **Class citizenship (20% of grade):** I care about whether you come to class and the role you play in it; our class will be most rewarding if you attend regularly, and if you are an active citizen. I expect you to come on time and to participate. After three unexcused absences, the class citizenship component of your grade will decrease by one letter grade for each additional unexcused absence. Class citizenship, however, entails more than just showing up. It means having done the reading, contributing to class discussions in large and small groups without monopolizing conversations, paying attention to me and to your classmates, completing short writing assignments in class, and generally participating in the collaborative activity of learning and politics. I understand that speaking in class can be challenging. We will have a number of different kinds of discussions to encourage participation, and you should use the blog as a way of preparing ideas to bring to our class sessions. Regularly coming to office hours and discussing the readings can contribute to your class citizenship grade as well. Last but not least, class citizenship means being receptive of and interested in others' political and philosophical perspectives, respectful of experiences different than your own, and open to having others disagree with you. Disagreement is inevitable in a political science class (including with me!), and can be incredibly productive so long as it proceeds collegially.
- **Class Blog (25% of grade):** Throughout the semester, we will write a class blog, using WordPress. During the first week of class, I will lead a brief WordPress tutorial and distribute instructions on joining WordPress and becoming a member of the blog. You are required to write one post containing (a) a 300 word response to the readings and (b) 1-3 discussion questions, once per week. Posts are due by 7:00am the day of class. The posting schedule will be passed out and posted on Moodle. You also need to read the posts on the blog before coming to class. If you comment thoughtfully on others' posts, it will be worth extra credit.

The blog is *not* intended to be a place for you to summarize the readings, but rather to interpret and analyze them. Your blog posts can take many forms: make connections to other questions, problems, and cases from the course; critique the legal reasoning at play in cases; note connections between earlier cases and contemporary political and judicial issues, and more. We will use responses and discussion questions in each class session.

A secondary goal of the blog is to familiarize you with the WordPress platform, gaining a skill set relevant for work in the many advocacy groups, organizations, and businesses that use WordPress or similar content management systems/web platforms. In order to encourage you to grapple with difficult ideas and challenge your own views, this will be a private blog visible only to our class.

- **Essay Exams (2 assignments, 15% each = 30% total):** You have two take-home essay exams to complete. For each exam, you will receive approximately four questions/prompts, out of which you will write two essays. The take-home exams are due on 3/2 and 4/15, and

you will have at least one week to work on them. For each day (not class period) an assignment is late, it loses one letter grade.

- **Final paper (25% of grade):** For the final project in this course, you will apply the skills and knowledge gained throughout the course to engage in constructing your own legal argument. Using a hypothetical case from the American Moot Court Association, you will research and write a legal brief from the perspective of either the Petitioner or Respondent. We will build up to the final paper throughout the second half of the course. More details will be given midway through the semester.

Texts

The book for this class is required. It is available in the bookstore to buy or rent. All other readings will be provided as PDFs on Moodle.

- Howard Gillman, Mark A. Graeber, and Keith E. Whittington, *American Constitutionalism: Powers, Rights, and Liberties*, Oxford University Press (ISBN 978-0199343386)

Technology

In general, my personal preference would be to minimize the use of tablets and laptops in the classroom. There is a growing set of evidence (for example [here](#), [here](#), [here](#), [here](#)) that, on aggregate, students taking notes by hand learn information more successfully and receive higher grades than those taking notes on computer, even when those on devices are exclusively focused on class tasks. Moreover, many of us (myself certainly included!) find it difficult to pull ourselves away from email, social media, news, etc. when we have screens in front of us. Finally, in a class that will involve lots of discussion with one another, screens may impede the conversations that will be essential to our experience in the course this semester.

However, I fully recognize that people learn in many different ways, and that you have limited print budgets. So, I would encourage you to reflect on the ways you learn effectively and the ways that learning is more difficult. If you would find it most effective to use a laptop or tablet for course readings and/or for note-taking, please do so, but there will be no phones used in class. I fully expect you to use devices in class only for tasks related to class, and that your attention is focused as much as possible on the conversations in class and on your peers. Ultimately, I want you to engage with the course material and course sessions in the way that will support your success in the class.

This policy is open to revision as the semester unfolds.

Disability Accommodations and Tutoring

If you have a disability and need accommodations, contact Learning Enrichment and Disability Services located on 2nd floor Pearsons (north side), 608-363-2572, learning@beloit.edu or make an appointment through joydeleon.youcanbook.me. For accommodations in my class, you must bring me an Access Letter from the Director of that office and then we will discuss how to meet your needs. Contact that office promptly; accommodations are not retroactive.

Free peer tutoring is available for most classes. For a tutor, apply by going to your Portal, to the Student Life tab, and then apply using the Tutoring Forms (on left) and Request a Tutor. If you have any questions, contact Learning Enrichment and Disability Services.

Writing Advising

The Writing Center has student writers who are trained tutors ready to work with you collaboratively on any stage of your writing in this class--from brainstorming to final editing. It's a friendly and supportive place, and their goal is to help you to improve your writing and become a better writer. You can make an appointment here: [Writing Center Appointments](#).

Policy on Inclusivity at Beloit College

Inclusivity is a demonstration of equity and social justice through awareness, understanding, and respect for the differences in identity, culture, background, experience, and socialization, and the ways in which these forms of difference impact how we live and learn. Inclusivity requires equitable, institution-wide representation and access to resources. In practice, this manifests itself by each individual being aware of, committed to, and responsible for the well-being and care of all students, staff, and faculty.

Academic Misconduct and Plagiarism

Academic misconduct and dishonesty are serious offenses. Such acts violate the trust that forms the foundation of the student-teacher relationship, they rob students of opportunities to learn, and they damage the reputation of the College as a whole. In particular, plagiarism constitutes intellectual theft and is completely unacceptable. I expect that you will follow Beloit's policy on academic honesty printed in the Student Handbook. Any assignments or exams that violate this policy will receive a failing grade. I will also notify the Dean of Students of any cases of academic dishonesty, and she will determine any further penalties.

Other course policies and notes

- If a student has a desired name that is not listed on my course roster, please let me know. Students may also notify me of their preferred gender pronouns. I use he/him/his pronouns.
 - Check your email regularly.
 - I strongly encourage you to come visit my office hours; if the times listed don't work, email me so we can figure out another time to meet.
 - If you are struggling with any aspect of the course, talk to me sooner rather than later so we can work on the ways to best help you. Please also consider requesting a Peer Tutor, working with the Writing Center, or seeking assistance from Learning Enrichment and Disability Services.
 - If a religious holiday that you observe conflicts with an assignment, please let me know in advance so that we may discuss alternate options.
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READING SCHEDULE

Subject to changes, which will be announced in class and over e-mail. When there are multiple readings listed, please read in the order listed below.

I. What is Law? How do we Interpret It?

Tuesday 1/17

- Read the syllabus carefully!!

Thursday 1/19

- HLA Hart, *The Concept of Law* (1961), chap. 5 + pp. 239-244
- Ronald Dworkin, "Law's Ambition for Itself" (1985), *Virginia Law Review* 71 (2)

Tuesday 1/24

- Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (1976), "On Paternalism" and "The Hegemonic Function of the Law"
- Sonia Sotomayor, "A Latina Judge's Voice" (2002), *Berkeley La Raza Law Journal* 13

Thursday 1/26

- Jack Balkin, "Fidelity to Text and Principle," in *The Constitution in 2020*, ed. Balkin and Siegel (2009)
- Richard A. Posner, "Values and Consequences: An Introduction to Economic Analysis of Law" (1998), *Chicago Working Papers in Law and Economics* 53

Tuesday 1/31

- AC, pp. 9-21
- Jonathan Keller, "How to Read a Case"

II. American Constitutional Development

Thursday 2/2: Drafting, Ratification and Debates over the Constitution

- AC 77-101

Tuesday 2/7: Separation of Powers and Early Jurisprudence

- AC 101-109
- AC 117-130

Thursday 2/9: Judicial Power and Early Debates on Rights

- AC 142-155
- AC 196-209

Tuesday 2/14: The National Bank, *Gibbons v. Ogden*, and Federalism

- AC 155-175
- AC 178-185

Thursday 2/16: The Scope of National Power in the Jacksonian Era

- AC 222-225
- AC 231-244
- AC 271-281

Tuesday 2/21: The Reconstruction Amendments and their Implementation

- AC 295-309
- AC 349-354
- AC 382-386

Thursday 2/23: Lincoln, Federalism and Due Process

- AC 323-334
- AC 357-367

Tuesday 2/28: The Lochner Court

- AC 420-434
- AC 400-409

Thursday 3/2

- **Essay Assignment I due**
- In-class: Handout and discuss final project; overview and discuss rest of semester

Spring Break!

Tuesday 3/14: 'Equality' and Individual Rights in the Republican Era

- AC 440-459

Thursday 3/16: The New Deal Era and its Aftermath

- AC 496-520

Tuesday 3/21: The New Deal and its Aftermath, cont.

- AC 520-543
- AC 549-552

Thursday 3/23: Korematsu and Brown

- AC 589-603
- AC 677-683

Tuesday 3/28: The Rights of Criminal Defendants

- AC 607-614
- AC 702-707
- AC 811-812
- AC 816-831

Thursday 3/30: The Rehnquist Court

- AC 723-725
- AC 846-853
- AC 855-864
- AC 877-884
- AC 963-968

Tuesday 4/4: Voting Rights and Campaign Finance

- AC 663-673
- AC 793-796

- AC 931-945

Thursday 4/6: Reproductive Rights

- AC 556-561
- AC 648-657
- AC 769-777

Tuesday 4/11: LGBT Rights

- AC 778-780
- AC 915-922
- TBA readings on *US v. Windsor*, *Obergefell v. Hodges*, and *Gloucester County School Board v. G.G.*

Thursday 4/13 Student Symposium day, No Classes

Essay Assignment II Due Saturday 4/15 at noon

III. Critical Perspectives on the Law

Tuesday 4/18: Law and Society

- David Kairys, *The Politics of Law* (1982), Introduction
- Kitty Calavita, *Invitation to Law and Society* (2010), Introduction
- Austin Sarat, “Going to Court: Access, Autonomy, and the Contradictions of Liberal Legality” (1998)

Thursday 4/20: Critical Race Theory and the Law

- Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989), *The University of Chicago Legal Forum*
- Charles R. Lawrence III, “Race and Affirmative Action: A Critical Race Perspective” (1998)

Tuesday 4/25: The Legal Construction of Race

- Ian Haney Lopez, *White by Law: The Legal Construction of Race*, chaps. 1, 5

Thursday 4/27: Feminist and Trans Legal Theory

- Wendy W. Williams, “The Equality Crisis: Some Reflections on Culture, Courts, and Feminism” (1992), *Women’s Rights Law Reporter* 14
- B. Lee Aultman, “Epistemic Injustice and the Construction of Transgender Legal Subjects” (2016), *Wagadu: A Journal of Transnational Women’s and Gender Studies* 15

Tuesday 5/2: Last Day of Class

Monday May 8, 5pm: FINAL PAPER DUE