

POLS 352: Civil Liberties (Spring 2019)

Monday, Wednesday, & Friday 9:00-9:50am

Classroom: CSB 272

Instructor: Andre P. Audette

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Andre's Office: CSB 330

Politics Party Time (Office Hours): 1:30-3 MWF, 11-12:30 Tues-Thurs, and by appointment



Course Description

Constitutional law often requires a balancing between the civil rights and liberties of the people and the power of the government to enforce laws. In the United States, the Supreme Court is the final arbiter of this conflict and plays an essential role in defining citizens' fundamental rights and freedoms. In this course, we will explore the constitutional basis for civil rights and liberties, how our understanding of these rights has evolved over time, and how judges make decisions about those rights. We will do so primarily through an examination of case law, focusing on the Bill of Rights and the 14th Amendment of the Constitution. For each case you should seek to understand what the law is, what the law should be, how the law was made and interpreted, and whose interests are reflected in the law. By the end of the semester, you will be able to apply similar types of legal reasoning to deliver an "opinion of the Court" on a civil liberties case that is currently on the docket of the U.S. Supreme Court.

*"Is this legal? Should it be legal?"
- You, after every case we read*

Course Objectives

After successfully completing this course, you will be able to better:

- Read, analyze, and critically evaluate court cases and legal reasoning
- Explain judicial processes, techniques of constitutional interpretation, and the role of courts in the American political system and democratic governance
- Understand and articulate the framework and legal tests used by the Supreme Court to decide civil liberties cases
- Examine legal issues with a political and historical lens
- Synthesize and intelligently express your own points of view, both orally and in writing

Required Text

The following book is available in the campus bookstore or through other online retailers. Please be sure to purchase the correct edition. (It is an older edition to save \$\$\$.)

- Epstein & Walker. 2016. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. 9th edition.

Other course materials will be made available on Moodle or via email.

Course Requirements

Be aware upfront that you will need to do a fair amount of reading, writing, and speaking in this course, though it will not meet the legal requirement for cruel and unusual punishment. This is to help you understand the advanced material we will be covering this semester. Each activity is carefully designed to help you succeed and develop useful skills for the next stages of your academic and post-academic careers.

To help you achieve the course objectives, final grades will be assessed through the following evaluations:

- 9 quizzes, 8 which count towards your grade (5%)
- 2 hypothetical case briefs (15%, 7.5% each)
- Moot court (15%)
- Final paper (20%)
- 2 exams (35%, 15% for the midterm, 20% for the final exam)
- Participation (10%)

Further information on these course requirements will be distributed in class

Quizzes

Over the course of the semester there will be 9 quizzes, 8 of which will count for your final grade. I will drop the lowest score. Regularly being quizzed on course material is shown to help college students retain information better, so it will serve you well to study for the quizzes in preparation for the other course requirements. The quizzes will include multiple choice and short answer questions and are closed-book. They will mostly include material from class or readings since the last quiz, but some may focus on the larger questions of the course. They are not meant to trick you; it will help you to know (at a minimum) the basic facts of the cases, how they differ from each other, and the legal reasoning behind them.

Hypothetical Case Briefs

You will complete two case briefs on hypothetical cases, one on criminal trials and one on free speech. The briefs should be about 5 pages double-spaced, covering the relevant facts of the case, the constitutional questions that rise from it, the expected decision, and the legal reasoning for the decision. You should approach the assignment as if you are a law clerk arguing to your employer how the case should turn out; thus the most important part of the brief will be the legal reasoning based on precedent and established norms.

Moot Court

During class we will hold a simulated Supreme Court session based on a case that is currently under review by the U.S. court system. Prior to the session, you will be assigned to one of three roles: lawyer for the petitioner, lawyer for the respondent, or Supreme Court justice. You will meet with your legal team ahead of time to prepare for the oral arguments. Additionally, you will turn in about a 7 page (double-spaced) case brief or opinion based on your assigned position.

Final Paper

In a 10-15 page double-spaced paper, you will write a majority opinion of the court in the case of *The American Legion v. American Humanist Association* (17-1717), which will have hearings in February 2019. Over the course of the semester, you should carefully read the briefs from the case in the lower courts and the relevant precedent cited, much of which we will read in this class. You should also pay particular attention to how Establishment Clause cases have developed over time and how they will impact the ruling in this case. Finally, you should address in the paper how you think the Court will decide the case (including whether it aligns with your own interpretation).

Exams

There will be two in-class, closed-book exams this semester. They are not cumulative, and will include fill-in-the-blank, multiple choice, short answer, and essay questions. Exams will cover material from lectures, reading assignments, and discussion.

Participation

A large part of our class will be based on discussion; therefore, it is essential that you come to class ready to actively participate. This includes (but is not limited to): attending class regularly, carefully reading the assigned texts, sharing your thoughts, opinions, and insights in discussion, considering and raising opposing viewpoints, engaging in respectful dialogue with others, listening attentively to others' perspectives, and following the discussion policies listed in this syllabus. You will receive an advisory midterm participation grade to help you assess where you are at halfway through the course.

Course Engagement Expectations

- Classroom activities (2.5 hours/week)
- Reading and class prep (7.5 hours/week)
- Papers (2 hours/week)
- Quiz and exam prep (1 hour/week)

Total: 13 hours/week

Grade Scale

A (93-100), A- (90-92.9), B+ (87-89.9), B (83-86.9), B- (80-82.9), C+ (77-79.9), C (73-76.9), C- (70-72.9), D+ (67-69.9), D (63-66.9), D- (60-62.9), F (<60)

Course Policies and Additional Resources

Academic Honesty

It is your responsibility to be familiar with and uphold the academic honesty policy of MC, as defined in the Scots Guide (<http://ou.monmouthcollege.edu/life/residence-life/scots-guide/academic-regulations.aspx>). Any student found to have violated these policies of academic integrity will receive a failing grade on the assignment and may be subject to further penalties by the College, including suspension or expulsion. If you have any questions about avoiding plagiarism or any of the other policies, please come talk to me.

Late Work/Extra Credit

An important part of academic and career preparation is the ability to meet deadlines and fulfill the requirements of your work. Therefore, late assignments will be subject to a half-letter grade reduction for every 0-24 hour period that the assignment is late. Additionally, there will be no extra credit given on an individual basis.

Laptops and Electronic Devices

Unless instructed otherwise, you are permitted to use laptops in class for note-taking purposes only. Cell phones and other electronics should be put away during class. To do otherwise detracts not only from your learning, but from other students' as well.

Attendance

Class attendance is expected, but not required, in this course. Beware that it is difficult to pass this course if you have a number of unexcused absences, as it is impossible to participate if you do not attend class or make other arrangements with me. Furthermore, you are responsible for all of the material covered in class, and it is thus in your best interest to attend every class. If you must miss a class, it is your responsibility to get notes from another student and to contact me about any makeup work.

Discussion Policies

The goal of discussion is to understand and learn from the viewpoints and experiences of others in order to better understand our own opinions and the functioning of the world around us. Specifically, our goal in this course is to consider various components of and to think critically about American democracy. Just as multiple voices are necessary for a healthy democracy, your participation is important for the learning experiences of your fellow classmates and your instructor. Therefore, participation will be graded on the quality, and not just quantity, of your contribution to this endeavor. To create an environment where everyone has the opportunity to participate, respect for individual differences and viewpoints will be maintained at all times. In sum, you are allowed and encouraged to disagree with other students, the professor, or the texts, but disagreement should always be expressed in a respectful manner inside and outside of the classroom.

Disabilities and Learning Differences

Any student who feels they may need support or accommodation for a disability should visit the Teaching and Learning Center on the 2nd floor of Poling Hall to establish eligibility and coordinate reasonable accommodations. I am happy to work with you and Disability Services to provide those accommodations. For more information, visit: <http://ou.monmouthcollege.edu/life/disability-services/default.aspx>.

Counseling Services

Counseling Services assists students in addressing personal, social, career, and study problems that can interfere with your academic progress and success. All services are free and can include individual and group counseling, crisis consultations, and wellness groups. The Counseling Center is located in the lower level of Poling Hall, and appointments can be made by calling Student Affairs at x2114 or by email to hfisher@monmouthcollege.edu or cbeadles@monmouthcollege.edu. You can find more info online at: <https://ou.monmouthcollege.edu/life/counseling-services/appointments.aspx>.

Writing Center and Tutoring – take advantage of these resources!!

The Writing Center offers unlimited, free peer tutoring sessions for MC students. Peer writing tutors are trained to work with writers from any major of any writing ability, on any type of writing assignment, and at any stage of their writing processes, from planning to drafting to revising to editing. The Writing Center is located on the 3rd floor of the Mellinger Teaching and Learning Center, and is open Sunday-Thursday 7-10pm and Monday-Thursday 3-5pm on a first-come, first-served basis. No appointment necessary!

All students can also make a free appointment with a Teaching and Learning Center tutor or stop by during drop-in hours. Information about tutoring services is available at: <http://ou.monmouthcollege.edu/academics/teaching-learning-center/tutoring.aspx>.

Exceptions, Extensions, and Exemptions

Exceptions to the policies and schedule on this syllabus are granted only in the cases of a true emergency. Please make arrangements with me if an emergency arises.

Syllabus Changes

I reserve the right to make changes to the syllabus or the course schedule if it will benefit all students. Advance notice will be provided for any changes.

Questions, Concerns, Comments

If you have any questions at any point, please do not hesitate to contact me! I encourage you to come to my office hours even if you just want to discuss politics or some other subject, and I can set up appointments if you are unable to meet during the scheduled times. (Please try to give me at least 24 hours notice if you'd like to make an appointment.)

Course Outline and Schedule

*Reading assignments are to be completed before the date they are listed.

*Please bring all assigned readings to class (paper or electronic).

Monday, Jan. 14th – Did ya see the “Holiday Jesus” on Monmouth’s public square?

- Syllabus

Wednesday, Jan. 16th – How to read cases, write case briefs, and discuss material

- American Bar Association – How to Read a U.S. Supreme Court Opinion
- *Dunn v. Madison* (2017)
- Kerr – How to Read a Legal Opinion

Friday, Jan. 18th – Supreme Court procedure and background

- Johnson – The Supreme Court Decision Making Process
- SCOTUSblog – Supreme Court Procedure

Monday, Jan. 21st – More background on deciding cases

- Epstein & Walker pgs. 10-42

Wednesday, Jan. 23rd – Start of the new semester? Let's talk hardened criminals.

- **QUIZ 1**
- Epstein & Walker pgs. 463-498

Friday, Jan. 25th – Law & Order: Monmouth

- Epstein & Walker pgs. 498-514

Monday, Jan. 28th – Did you do the reading? I plead the Fifth!

- Epstein & Walker pgs. 515-535

Wednesday, Jan. 30th – Can we have a fair trial? The jury's still out.

- **QUIZ 2**
- Epstein & Walker pgs. 536-569

Friday, Feb. 1st – Now you can see whether pg. 2 of the syllabus is correct

- Epstein & Walker pgs. 569-597

Monday, Feb. 4th – Now you can see whether pg. 1 of the syllabus is correct

- **HYPOTHETICAL CASE BRIEF 1 DUE VIA EMAIL AND PAPER BY 9AM**
- Epstein & Walker pgs. 191-221

Wednesday, Feb. 6th – Burnings, Bibles, and Boston

- **QUIZ 3**
- Epstein & Walker pgs. 221-247

Friday, Feb. 8th – Lies, Hatred, and You

- Epstein & Walker pgs. 247-267

Monday, Feb. 11th – (Not?) Free (Not?) Speech

- Epstein & Walker pgs. 267-276

Wednesday, Feb. 13th – Freedom to be fake news?

- **QUIZ 4**
- Epstein & Walker pgs. 293-320

Friday, Feb. 15th – Can you actually yell “fire” in a crowded theater?

- Epstein & Walker pgs. 321-335

Monday, Feb. 18th – The day that we basically talk about porn

- Epstein & Walker pgs. 335-362

Wednesday, Feb. 20th – Petition for review has been accepted

- In class exam review...bring your questions!

Friday, Feb. 22nd – The funnest of days

- **EXAM 1**

Monday, Feb. 25th – Back to the bedroom (we’ve got more to discuss)

- Epstein & Walker pgs. 390-427

Wednesday, Feb. 27th – Required drug testing before spring break

- Epstein & Walker pgs. 427-460

*Friday, March 1st – Friday, March 8th – **NO CLASSES (SPRING BREAK)***

Monday, March 11th – Ok, time to come back to (the Monmouth) Jesus

- Epstein & Walker pgs. 91-115

Wednesday, March 13th – Exercise your mind for free

- **HYPOTHETICAL CASE BRIEF 2 DUE VIA EMAIL AND PAPER BY 9AM**
- Epstein & Walker pgs. 115-131

Friday, March 15th – Overview of some other free exercise cases

- *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993)

Monday, March 18th – Pay attention: we’re talking Establishment Clause now

- **QUIZ 5**
- Epstein & Walker pgs. 131-162

Wednesday, March 20th – A fine new Establishment

- Epstein & Walker pgs. 162-190

Friday, March 22nd – Good prevailing precedent or just a lemon?

- *Lemon v. Kurtzman* (1971)

Monday, March 25th – Moot court prep

- **QUIZ 6**
- Read case briefs for moot court simulation

Wednesday, March 27th – More moot court prep

- Review case briefs for moot court simulation

Friday, March 29th – A little interlude for guns

- Epstein & Walker pgs. 379-389

Monday, April 1st – Moot Court

- Oral arguments #1
- **LAWYER CASE BRIEFS DUE VIA EMAIL AND PAPER BY 9AM**

Wednesday, April 3rd – Moot Court

- Oral arguments #2

Friday, April 5th – NO CLASS (Andre in Chicago for a conference)

Monday, April 8th – Racial equality in schools

- **JUDGE OPINIONS DUE VIA EMAIL AND PAPER BY 9AM**
- Epstein & Walker pgs. 618-626

Wednesday, April 10th – Scrutiny and some more discrimination

- **QUIZ 7**
- Epstein & Walker pgs. 640-669

Friday, April 12th – Gender and sexual orientation

- Epstein & Walker pgs. 669-694

Monday, April 15th – Preparing for the end

- Read case briefs for *The American Legion v. American Humanist Association*

Wednesday, April 17th – Still preparing for the end

- Continue reading case briefs for *American Legion v. AHA*
- Linder – Religious Symbols in Public Places

Friday, April 19th – Monday, April 22nd – NO CLASSES (EASTER BREAK)

Wednesday, April 24th – Another take on the Establishment Clause (for your papers)

- **QUIZ 8**
- Muñoz – The Original Meaning of the Establishment Clause and the Impossibility of Its Incorporation

Friday, April 26th – The poor, education, and poor education

- Epstein & Walker pgs. 694-701

Monday, April 29th – Legal rights for “aliens”

- **QUIZ 9**
- Epstein & Walker pgs. 701-706
- Freitas – The Legal Rights of Extraterrestrials

Wednesday, May 1st – The last day ☹

- **FINAL PAPER DUE VIA EMAIL AND PAPER BY 9AM**

Friday, May 3rd – Final Exam

- **EXAM 2 at 3PM in our normal classroom**