

# PSCI 471

## American Constitutional Law

Fall 2018

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Office LA 414

Office Hours:  
M 12:00=2:00  
WF 1:00 – 3:00  
or by appointment

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The purposes of this class are to:

- (1) acquaint students with several substantive areas of American Constitutional Law that deal with constitutional issues relating to the powers of the federal government and the specific operation of each of the three branches of the federal government.
- (2) teach students analytic skills focusing on logical and other legal modes of reasoning,
- (3) develop students' written and oral communication skills, and
- (4) provide students with a perspective on the roles played by the United States Supreme Court in American politics.

The required book for this course is:

David O'Brien, *Constitutional Law and Politics: Struggles for Power and Governmental Accountability*, 10th ed. Vol. I (Norton, 2017). Paperback

David O'Brien, *Storm Center: The Supreme Court in American Politics*, 11th ed. (Norton, 2017)

Book these books are available at the University Bookstore and you should purchase them immediately

Each student is responsible for:

- 1) **reading** the appropriate materials **before EACH class**,
  - 2) **attending each class**, prepared to discuss the cases and the other assigned materials, and
  - 3) **preparing** the appropriate **written materials** for submission at **each class**. [These assignments are listed in the Writing Assignment document for this course.]
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## GRADES

The grades for this course will be based on a variety of oral and written work. These include: (1) Oral Participation in class discussions, (2) the daily, Written Assignments, and (3) a Final Examination. The relative weights of these grades for the Final Grade are:

| Grade Component     | Weight      |
|---------------------|-------------|
| Class Participation | 35%         |
| Written Assignments | 35%         |
| Final Examination   | 30%         |
| <b>Total</b>        | <b>100%</b> |

Grades for this course will be assigned using the traditional letter grading system which ranges from grades of A down to F. The final letter grade will be curved somewhat in order to reflect the comparative quality of the work each student submitted throughout the course.

**Class participation** will focus on daily, in-class discussions of the assigned materials (particularly the cases covered in the casebook and hypotheticals presented in class). Individual student responses to questions posed in class will form the basis of this part of each student's Grade. The process involves the instructor "calling on," i.e., questioning, individual students a variety of times during (throughout) the semester. These discussions will be based on the assigned readings from the O'Brien casebook, plus hypotheticals that emerge from the cases or the discussion outlined in the casebook. The quality of each student's response to those questions will be graded. **Class attendance is required, and each student will be expected to be in class and prepared to discuss assigned class materials every day.** Voluntary questions and comments during class are always welcome when those relate to the cases and the materials under discussion. However, these voluntary contributions WILL NOT be graded for purposes of this part of the Final Grade.

Class discussions are a vital part of this course. As a result, it is important to listen respectfully to what other students contribute when they are responding or commenting on the subject. Respect for your classmates is very important. Please remember to turn off all electronic devices before coming into class. Ringing devices are a terrible distraction and will result in the immediate end of class. If phone calls or texting is vital to your continued existence, then please do not attend class.

The **Written Assignments** will require students to complete a number of short, daily writing efforts throughout the semester. Students must complete and submit these at the outset of each, assigned class meeting. The form of these is indicated on the Writing Assignment handout for this class. These assignments have two purposes. These serve to develop the ability of students to write succinctly, directly, and clearly. In addition, the preparation of these assignments insures student preparation for class each day. Students need to learn to write clearly, concisely, and quickly, as well as regularly. Students will

prepare these written assignments as announced in class. The assignments will involve brief, typed documents. **LATE (or early) SUBMISSIONS WILL NOT BE ACCEPTED.** The value of these writing assignments for learning course material involves the **timely** preparation of materials for class discussion. Furthermore, these written briefs form the basis of your class notes. It is important for students to make two copies of these materials, one which they can annotate and refer to during class, the other that they submit for evaluation at the beginning of class. These assignments are to be submitted in **typed, single-spaced** form, with your name on each page of each assignment. Each submission should clearly include the name of the case and the citation to the case.

These written assignments should form the "notes" for this course. The class meetings will not provide a set of "lecture notes" in the traditional sense. Each case you read should be briefed, in writing, and those should be brought to class on the days they are scheduled to be discussed. Then they can be annotated in class with other items that develop during the class discussion. There should be no excuse for a student who cannot state the holding in a case or the reasoning the court used to reach and justify that holding. There is a separate handout on briefing cases for this course.

The first few days (say the first two weeks) of the course will be devoted to discussing materials relating to the Supreme Court. After a brief discussion of the legal "context" in which the Supreme Court operates – these preliminary matters – the course will turn to the substantive materials (the cases) in O'Brien.

**The first reading assignment, to be completed at the beginning of the course is to read the complete U.S. Constitution, all of the O'Brien Storm Center book, and Chapter 2 of the O'Brien Casebook. This material will form the basis for the discussion during the first weeks of the course.**

The **Final Examination** in this course will be that, a "Final." It is very unlikely to be an in-class or traditional Final Exam. Rather it will probably be a "take-home" requiring students to complete the work by the regular time and day of the scheduled Final Examination. That is scheduled for **December 13, 2018, 4:00 – 5:50 PM.** Students should plan to receive the Exam during the last week of classes for the semester, and to submit the completed examination no later than the day and time indicated above.

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### **Notes on Class Attendance and Participation**

Students are expected to attend class, prepared to discuss the assigned reading materials. That requires several items: (1) continual, advanced preparation of all the assignments (both reading and writing assignments), (2) regular and sustained class attendance, and (3) bringing case notes and other course materials to each class in order to engage in class discussion. **Preparation** of assignments may involve using Lexis-Nexis or doing library research as well as reading the cases and other materials in the Casebook (O'Brien).

"Reading" means **understanding**, not just looking at the words quickly, or using shortcuts to "get through" the assigned materials. Understanding the concepts, logical reasoning, and technical materials contained in court opinions, statutory provisions, constitutional provisions will require careful, slow reading. In addition, it requires **THINKING** about the materials both as they are read and later. Second, understanding requires **remembering** what you have mastered. Students are expected to recall these materials when they are relevant to class discussion. This level of mastering materials may be frustrating because it is labor-intensive and time-consuming. It is important to begin gaining these skills at the very outset of the semester, so that one does not become "lost" or fall way behind at some later point during the term. The reading in this course becomes more complicated throughout the semester.

**Class attendance** is required for this course and absences from class, whatever the reason for the absence, are NOT excused, but with the bereavement exception outlined below. Such absences can be explained, but students remain responsible for all the material covered, presented, or due in class. That includes announcements and assignments that are made in class. It is unnecessary for students to explain absences to the instructor. Students should pick up assignments, announcements, and the like from fellow students for those days when they are absent. The instructor will NOT repeat announcements or discussions for the benefit of students who do not attend class. Given the nature of classes in this course, it is not possible for students to "make-up" class meetings that they miss. It is not possible to learn how to think analytically and to write clearly and analytically unless students engage in those activities daily, in class and out-of-class. No electronic or in-absentia submissions of daily writing assignments will be accepted. In addition, all students will be randomly called on in class to discuss cases or other legal materials (See the discussion regarding Class Participation *supra*.). As noted clearly above, students are to be prepared on all the materials for all classes so that they can answer questions and follow the class discussion even if they are not called on for a particular question. Absences from class will be graded if the student is called on at that class session, just as students who are not prepared for class will be graded when questioned. That really means that students must attend class, prepared every day, and they are responsible for all the materials covered in the class throughout the semester. The class participation grade can be seriously damaged by continual absences from class. (Attending class but not being able to discuss the cases for the day will also severely harm the class participation grade. Reading cases in advance is certainly required, but forgetting them or not reviewing those cases closely just before class each day, means virtually that the student is not prepared for class and cannot discuss the class.)

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| <p>The following items are important for you to know about and to understand. These are statements provided by the University or the instructor. They relate to matters of general concern and that might affect you as a student generally or in this class during the term.</p> |
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All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and students need to be aware of the Student Conduct Code. See [http://www.umt.edu/vpsa/policies/student\\_conduct.php](http://www.umt.edu/vpsa/policies/student_conduct.php). In connection with this course, the penalty for any student engaging in academic dishonesty, particularly plagiarism, will be a failing grade for the entire course.

Students with disabilities may request reasonable modifications by contacting me. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students.

“**Reasonable**” means the University permits no fundamental alterations of academic standards or retroactive modifications. Contact Disability Services for further information and assistance. The **DSS** website: ([life.umt.edu/dss/Faculty/default.php](http://life.umt.edu/dss/Faculty/default.php)) or call 406.243.2243. You should inform the instructor at the outset of any needs for accommodation.

I recognize that a time of bereavement is very difficult for a student. As a result, students will be excused for funeral leave and given the opportunity to earn equivalent credit and to demonstrate evidence of meeting the learning outcomes for missed assignments or assessments in the event of the death of a member of the student’s family. I do not need any sort of “excuse” for this purpose. I will take your word for your need.

In the event of a major campus emergency, course requirements, deadlines and grading percentages are subject to changes that may be necessitated by a revised semester calendar or other circumstances beyond the instructor’s control.

I am committed to maintaining a community which recognizes and values the inherent worth and dignity of every person; fosters tolerance, sensitivity, understanding, and mutual respect among its members; and encourages each individual to strive to reach his or her own potential. To achieve academic excellence, I will do everything I can to insure that we all respect and value diverse perspectives and backgrounds in order to promote the exchange of ideas, and enriches campus life.

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Students should note that progress or improvement in the course throughout the semester is an important indicator of how much the student has learned and how well the student has learned the course material. Students should not be concerned if their early work (written and oral) is not “perfect.” This course involves a learning process that is labor-intensive, somewhat obscure with complicated and abstract materials, i.e., there is a steep “learning curve.” Students will learn a good deal during the semester, rather than to know a great deal at the beginning of the term. Learning this material is a cumulative process and immediate or complete understanding should not be expected. If students do not think they are “learning” during the semester, they should talk with the instructor about this concern. If students feel frustrated during the semester, it is quite all right to talk

about these concerns with the instructor. Students are encouraged to do that. “Frustration” can be expected in this course, because there are often NO “CORRECT ANSWERS TO MANY OF THE QUESTIONS that are raised. That is rather abnormal for courses, but it is quite true of a course in Constitutional Law. Students should expect to engage in any number of informal discussions with the instructor **or with other class members** throughout the semester about the course material. Learning requires a substantial commitment on the part of the student, and students must be prepared to invest time and effort in this process.

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