

POLITICAL SCIENCE 455 – Section 1 AMERICAN JURISPRUDENCE Spring, 2017

INFORMATION

COURSE: Monday, Wednesday, and Friday 3:00 – 3:50pm in **BRTH #101**

INSTRUCTOR: Dr. Mikel Norris

OFFICE: Brittain Hall #341

OFFICE HOURS: Tuesday & Thursday, 1 – 3pm, and by appointment

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INTRODUCTION

Welcome to Political Science 455, American Jurisprudence

Catalog Description

POLI 455 American Jurisprudence (3) (Prereq: POLI 201 or permission of the instructor) (Prereq: sophomore standing or permission of the instructor) An examination of the approaches and controversies concerning legal interpretation and legal reasoning in the American political order. A Major focus of the course is constitutional interpretation. Readings will be drawn principally from the writing of major figures in American jurisprudence.

Course Objectives

1. Introduce students to the several methods of constitutional interpretation discussed and debated in the American legal community.
2. Analyze the strengths and weaknesses of each method of legal reasoning – particularly within the context of constitutional interpretation
3. Assess the politics of constitutional case outcomes in light of the proposed benefits offered by proponents of each method of interpretation.

Student Learning Outcomes

Upon successful completion of the course, students are expected to be able to:

1. Describe and explain different theories of constitutional and statutory interpretation.
2. Identify why certain modes of constitutional interpretation result in court decisions considered to be judicially active
3. Develop a rich understanding of important historical Supreme Court cases that have shaped how and why we interpret the Constitution the way we do.

Students need to be warned up front that there will be a lot of reading in this course. If students do not read the assigned materials, they will not pass this course.

BOOKS & SUPPLEMENTARY MATERIALS

The following required texts are available for purchase at the University Bookstore:

- Wilkinson III, J. Harvie. 2012. *Cosmic Constitutional Theory: Why Americans are Losing their Inalienable Right to Self-Governance*. Oxford: Oxford University Press
- Cross. Frank. 2008. *The Theory and Practice of Statutory Interpretation*. Stanford University press.
This book is available in E-book form from the CCU library website.

The Supreme Court cases, book chapters, and law journal articles listed in the Course Schedule section are available on Moodle. These readings are **required readings**. I may assign more reading during the course of the semester. These materials will also be posted on Moodle.

ASSIGNMENTS

The assignments for the course are listed below:

- **MIDTERM EXAM:** The midterm examination will be in multiple choice/fill-in-the-blank/essay format. It will be worth 20% of your final grade. The date of the midterm examination will be **Friday, March 3rd**.
- **FINAL EXAM:** The final examination will be in roughly the same format as the midterm examination. It will be worth 25% of your final grade. The date of the final examination will be **Friday, April 28th**.
- **QUIZZES:** There will be four quizzes assigned at the discretion of the professor throughout the semester to ensure students are reading the course materials. The total of four quizzes will be worth 20% of your final grade.
- **PRECEDENT PAPER:** Students will write an 8-10 page paper describing the judicial behavior of a given Supreme Court justice on a given issue of law over the course of their career. I will hand out more specific details about this assignment at a later date. This paper will be worth 20% of your final grade. The due date for the precedent paper is **Wednesday, April 12th**.
- **CLASS PARTICIPATION:** Class participation is absolutely essential for this course to be effective. It will be worth 15% of your final grade. We will be using the Socratic Method as it is used in law school to discuss the several cases and theories we discuss in class. If you are unprepared for class, your participation grade will suffer.

GRADING

A total of 500 points can be earned in this class. You will earn points as follows:

- Midterm Examination: 100 points
- Final Examination: 125 points
- Quizzes: 100 points (25 points each)
- Precedent Paper: 100 points
- Class Participation: 75 points

Your grade will be based on the following calculations:

- A (90% - 100%) = 450-500 points
- B+ (88% - 89.9%) = 438-449 points
- B (80% - 87.9%) = 400-437 points
- C+ (78% - 79.9%) = 388-399 points
- C (70% - 77.9%) = 350-387 points
- D+ (68% - 69.9%) = 338-349 points
- D (60% - 67.9%) = 300-337 points
- F (0% - 59.9%) = 299 points or less

ATTENDANCE and your CLASS PARTICIPATION GRADE

It should be common knowledge that students who attend and participate in class discussion perform better in class exercises (tests, quizzes and homework) and ultimately receive higher grades. Therefore, class attendance **WILL BE MANDATORY**. Attendance will be taken regularly. Due to the nature of this particular course, students are only allowed **TWO (2)** free absences. 5 points will be deducted from a student's participation grade beginning with their third absence and each absence thereafter. Per University policy, professors reserve the right to fail any student who is absent for more than 25% of regularly scheduled class meetings. This comes out to ten (10) classes a semester. **THIS POLICY WILL BE STRICTLY ENFORCED**. I will notify a student via e-mail after their ninth absence that they cannot miss any more classes or else they will fail the course. If a student misses the tenth class they will automatically fail the course **REGARDLESS OF PREVIOUS COURSE PROGRESS**. There will be no exceptions to this rule.

Excused Absence Policy: I will only accept excused absences in three instances. Please make sure you are absolutely clear about these instances if you plan on missing class:

- **University Representation:** A student will have an excused absence if they miss class because they are representing the University in an official capacity (ex: sports, mock trial, Model UN, SCSL, etc.). Students must supply me with documentation of this event on Coastal Carolina University letterhead **BEFORE THE EVENT** to have these absences excused.
- **Death of a Family Member:** A student will have an excused absence if they miss class due to a death in the family. However, merely telling me this is not sufficient. If you miss class for this reason you **MUST** inform the Dean of Students Office that you will be missing time because of this event. Your absence will **ONLY** be excused when I receive notification from the Dean of Students' Office that you will be missing extended class time.

- **Extended Illness:** The key word in this incidence is EXTENDED. I **WILL NOT** excuse single absences for illness, and I **WILL NOT** accept doctor's notes or paperwork from Health Services as an excuse. If you are going to miss extended time due to illness, you **MUST** inform the Dean of Students' Office that you will be missing time because of this event. Your absence will **ONLY** be excused when I receive notification from the Dean of Students' Office that you will be missing extended class time.

Class participation is also important for class success. I am going to use the **Socratic Method** as much as I can in this course, and the course is well suited for its use. It is the method used to teach the law in law school, so those interested in law school need to get used to it now. Students need to be aware that they may be called on **at random** to answer questions related to the readings. If you are unprepared, your participation grade will drop. Each student will get 2 "passes" to use. After that, I will begin to take away points from your participation grade.

How the Socratic Method Works

1. The professor asks a student to describe the facts of a case and the questions the court needs to answer.
 - a. If discussing legal theory, the student may be asked to describe the theory.
2. Next, the professor usually asks how the court answers the question, and by what logic.
 - a. If discussing legal theory, the student may be asked to identify the reason why some prefer that theory of legal interpretation over others.
3. From there, the student is asked whether they do or do not agree with the answer and the logic used to reach the answer.
4. The professor then questions the foundations of the logic of the answer. This is often done by breaking apart the logic. Sometimes, it is done by altering facts to create new, hypothetical circumstances that the student must then answer. Sometimes, the professor just plays devil's advocate.

The point of the exercise is for students to arrive at their own conclusions after critically analyzing all angles of an argument. This is merely a summary of how the Socratic Method works. What is important for students to know is that **if you are not prepared, i.e. you haven't read the material or haven't thought about the material in depth before class, you will not do well.** I am not looking for students to have the material mastered by the time they get to class. That's not the point. What I **AM** trying to do is to make students think about the material beforehand so we can discuss it, and so I don't have to lecture for an entire class. Students will not learn the material if I teach the class in that fashion.

Students are also asked to speak and act appropriately during class. This includes not talking to other students in a disruptive manner during class, or making inappropriate comments toward other students. **Cell phones should also not be used during class.** They are disruptive to the instructor and other students. 3 points will be deducted from a student's class participation grade each time I see a student using their cell phone in class. Depending on circumstances, more points may be deducted, and I will ask the student to leave the class.

I would ask all students to think of their participation grade as a clean slate. Everyone has a 100% on the first day of class. If you regularly attend class, come to class prepared, participate in discussion and don't use your cell phone you will get a 100% participation grade. If you don't exhibit these behaviors your grade will drop. It will ultimately be up to you what this final grade will be.

LATE & MISSED ASSIGNMENTS

I **WILL NOT** give make-up tests or quizzes unless the student missed a test or quiz because of an **EXCUSED** absence. If a student knows he/she is going to miss class the day a case brief is due – even if it is for an excused absence – I expect the case brief to be turned in **BEFORE THE DUE DATE**. 2 points will be deducted from a case brief's grade every day it is late. All students will be aware of when assignments are due, so there are no excuses for missing a quiz, exam, or a case brief.

CHEATING AND PLAGIARISM

Cheating and/or plagiarism are wrong and I do not like it. It is unfair to other students. Furthermore, it reflects very poorly on your character. Cheating and/or plagiarism carry with it a severe penalty, and may even lead to expulsion from the university. **DON'T DO IT**. It is wrong and will not be tolerated. Those caught cheating or plagiarizing (e.g., looking at someone else's paper during a test, consulting notes during a test, plagiarizing material on papers, etc.) will be penalized severely. Instances of plagiarism will be sent to academic affairs. The penalty I will ask the Academic Affairs Committee will be determined by the nature of the offense. Typically, I students receive an Fx for all assignments.

Coastal Carolina University operates under a Code of Student Conduct, which governs both academic and social conduct. The Code of Student Conduct may be reviewed here:

<http://www.coastal.edu/conduct/documents/codeofconduct.pdf>

Per the Code of Student Conduct, all students at Coastal Carolina pledge to oppose all instances of academic dishonesty. Plagiarism is listed as the first form of prohibited conduct in the Code of Conduct. This should make abundantly clear the importance of not engaging in this type of action. Students may talk to me privately if they have any questions or concerns involving cheating and plagiarism.

ACCOMODATION FOR STUDENTS WITH DISABILITIES

I am committed to making all necessary accommodations for students with verified disabilities. Students with disabilities are urged to contact the Office of Accessibility and Disability Services (843-349-5042, or kgoss@coastal.edu) to learn more about the rights and responsibilities of disabled students attending Coastal Carolina University.

ODDS AND ENDS

WITHDRAWAL: It is the responsibility of students to make sure they take all of the necessary steps to withdraw from a class if they choose to do so. If you withdraw from this class and continue to receive emails from me then there is still a problem and you will need to talk to the University registrar. If you remain on the class register after the withdraw date I will have no choice but to give you failing grade.

INCOMPLETES: No incompletes will be issued except in extraordinary and well-documented circumstances.

*******THE PROFESSOR RESERVES THE RIGHT TO MAKE CHANGES TO THE SYLLABUS DURING THE COURSE OF THE SEMESTER. ANY CHANGES WILL BE DISCUSSED IN CLASS BEFOREHAND*******

COURSE SCHEDULE with READINGS & ASSIGNMENTS

January 9: Course Introduction

Unit 1: The Proper Role for the Courts at the Founding – January 11 thru January 20

- *The Federalist Papers* #78 thru #83 (Available on Moodle)
- *Anti-Federalist Papers* #XI thru XV (Available on Moodle)
- *Democracy in America*, Chapters 6 & 8 (Available on Moodle)
- **MONDAY, JANUARY 22nd: MARTIN LUTHER KING DAY (NO CLASSES)**

Unit 2: The 14th Amendment and the Birth of Substantive Due Process

- Congressional Debates of the 14th Amendment
- *The Slaughterhouse Cases*
- *The Civil Rights Cases*
- *Munn v. Illinois*
- *Allegeyer v. Louisiana*
- *Lochner v. New York*
- *Adkins v. Children's Hospital*
- *West Coast Hotel v. Parrish*

Unit 3: The Attitudinal Model

- Cross, Chapters 1 & 7
- Segal & Spaeth. 1992. *The Supreme Court and the Attitudinal Model*, Chapters 2 & 3
- Segal & Spaeth. 1999. *Majority Rule or Minority Will*, Chapters 1, 2 & 9

Unit 4: Judicial Activism and Judicial Restraint

- *Wickard v. Filburn*
- *Seminole Tribe v. Florida*
- *United States v. Lopez*
- *Gonzalez v. Raich*
- *Employment Division v. Smith*
- *City of Boerne v. Flores*
- *Burwell v. Hobby Lobby*
- *Ashwander v. Tennessee Valley Authority*

Unit 5: Liberal Judicial Activism

- *Brown v. Board of Education*
- *Griswold v. Connecticut*
- *Engel v. Vitale*
- *Miranda v. Arizona*
- *Mapp v. Ohio*
- *Roe v. Wade*
- *Goldberg v. Kelly*
- *Baker v. Carr*
- *Kelo v. City of New London*
- *Obergefell v. Hodges*

Unit 6: Conservative Judicial Activism

- *United States v. Morrison*
- *District of Columbia v. Heller*
- *Bush v. Gore*
- *Citizen's United v. Federal Election Commission*
- *Shelby County v. Holder*
- *Seminole Tribe v. Florida* (again)
- *Michigan v. Long*
- *Lucas v. South Carolina Coastal Commission*
- *Herring v. United States*
- *Board of Trustees, University of Alabama v. Garrett*
- *Medellin v. Texas*

MID-TERM EXAM: FRIDAY, MARCH 3rd

MARCH 6 – 10: SPRING BREAK (NO CLASSES)

Unit 7: Living Constitutionalism

- Wilkinson, Chapter 1
- Rehnquist: The Notion of a Living Constitution

Unit 8: Textualism and Originalism

- Cross, Chapter 2
- Wilkinson, Introduction and Chapter 2
- Bork, Neutral Principles and Some First Amendment Problems
- Colby & Smith: Living Originalism

Unit 9: Legislative Intent

- Cross, Chapter 3

Unit 10: Pragmatism

- Cross, Chapter 5
- Wilkinson, Chapter 4

Unit 11: Structuralism and Political Process Theory

- Wilkinson, Chapter 3

Unit 12: Concluding Remarks – Interpretation or Ideology?

- Wilkinson, Chapter 5
- Cross, Chapter 6

PAPER DUE WEDNESDAY, APRIL 12th

FRIDAY, APRIL 14th: SPRING HOLIDAY (NO CLASSES)

FINAL EXAM: FRIDAY, APRIL 28th, @ 4pm, in this classroom