

Professor Richard C. Reuben
State Constitutional Law 5910
Winter 2021. ONLINE.
TBD, 6-7:50 p.m.
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State Constitutional Law **Preliminary Winter 2021 Syllabus**

The U.S. Constitution is the nation's seminal law governing the structure of the federal and state governments, the rights of individuals under that government, and the relationship between the state and federal governments. However, each state also has a constitution of its own that serves as its foundational law and that often provides a rich source of rights beyond those provided by the federal Constitution.

This course will explore the differences between state and federal constitutions, focusing especially on the rights those documents confer. Some of the rights conferred in state constitutions parallel those found in the U.S. Constitution, while others are more unique to states or a particular state. To the extent that the rights are similar, the critical question we will explore during the course include whether, when, and why state and federal constitutional provisions should be interpreted similarly and differently.

About half of our time will be spend on general state constitutional law. The other half will focus on Missouri constitutional law.

Readings: The casebook for this course is Sutton et al., *State Constitutional Law: The Modern Experience* (3rd ed. 2020). We will also work with the U.S. and Missouri Constitutions, both of which can be found on Canvas. There are also additional readings on Canvas.

Pace: We will cover about 20-30 pages each class, more or less, and generally track the order of the syllabus, except that we will integrate Chapter XVII into the early part of the course and cover specific rights in the latter half of the course. I will post PowerPoint slides on Canvas shortly before class.

Class Communication: I use Canvas Announcements as my primary means of communicating with the class. I generally post reading assignments for the week the preceding weekend. If you don't receive an announcement from me by noon on Monday, you should read the next 30 or so pages on the syllabus.

Class Attendance: Regular class attendance and participation is expected, consistent with the Law School's formal attendance policy, which may be found on the Law School's web site at <http://catalog.missouri.edu/academicpolicies/attendancel/>. I do not use excused absences, but rather give you five absences for any reason – a third of the semester – after which you will be required to file a Motion for Leave to Take the Final Examination explaining your circumstances and why you should be permitted to take the exam. The motion will be considered in consultation in consultation with the Associate Dean for Academic Affairs. Covid-related absences will not count toward the total number of absences you are permitted.

Class Participation: I value your participation in class, but want to be clear that the class participation component of your grade is not based on class attendance. Rather, it is based on

your vocal, written, and otherwise demonstrable engagement with the materials and involvement in the class' growing mastery of them.

Some of you may feel uncomfortable speaking in front of others. I was that way as a student, too. However, I also quickly learned that silence is not an option for a practicing lawyer, and this classroom is the place to learn how to speak like a lawyer, as well to think and write like a lawyer.

I realize this may be particularly challenging for students who are more introverted. If that's you, please let me know privately so we can work on participation expectations for you together in light of your situation. I also recommend Heidi Kristin Brown, *The Introverted Lawyer* (2017), which offers many practical suggestions for success in law.

Grading: Your final grade will be based a research paper, a class presentation of your research, and class participation. Each component will be equally weighted as one third of your grade.

- a. **Paper:** This will be a 20-page paper on a Missouri state constitutional right or doctrine of your choice, subject to my approval. You may choose either a parallel or unique state right. To help keep you on track, please submit the following assignments on Canvas by 6 p.m. on the date the assignment is due. Late or incomplete assignments will be subject to grade reduction.
 1. Deadlines
 - a. Your choice of Missouri right, and why you are choosing it.: January 28.
 - b. A rough outline: February 18
 - c. A detailed outline: March 18.
 - d. Writing section first draft: April 5
 - e. Final paper: May 3 at 11:59 p.m.
 2. Your papers must be double-spaced and printed on one side, with one-inch margins on all sides, and 12-point Times Roman font.
 3. Substantive requirements:
 - a. A summary of the federal right (if and as appropriate)
 - b. A summary of the treatment of the right by other state constitutions, drawn from the casebook materials on that right and any other resources you may choose.
 - c. A summary of the legislative history of that provision in the proceedings of the Constitutional Convention leading to the Missouri Constitution of 1945.
 - d. The treatment of that right by the Missouri courts
 - e. Discussion of any cases about that right currently being litigated in the state courts.
 4. **Presentation.** You will have 25 minutes toward the end of the semester to present your paper to the class. You may use PowerPoints, but please do not read your PowerPoint slides.

5. Writing Section. Students in the writing section are required to turn in their papers early for my review and then revise your paper in response to my comments.

My Class Style: I love teaching constitutional law and enjoy bringing the fascinating issues they raise to students with clarity, energy, and occasional humor. However, I have come to learn over the years that my class style is not for everyone, and prefer to be up front about that so you can make your own choices about whether this is a class for you.

To begin with, I use a modified version of the Socratic Method and do not spoon feed, provide rubrics, use panels, or other such classroom gimmicks. I do some lecturing in class. But mostly I ask questions because, as I hope you know by now, the questions are much more important than the answers. We learn in law through discussion, the exchange of ideas, and a rigorous process of respectful critical analysis. In this regard, my job is to help you learn, not to “teach you.”

I use cold-calling, and the best way to avoid it is to volunteer. Otherwise, you *will* be cold-called – and please know that it is generally not enough to say “I don’t know” or “I am not prepared,” “I didn’t read this case,” or otherwise pass. These are not options for practicing lawyers, and they aren’t for you in this class.

As in all constitutional courses, cases will be important. General state constitutional law courses will be important for the propositions they stand for. Missouri cases will be especially important because they are controlling law in this state, obviously. In both contexts, the questions the cases raise will extend beyond their holding, and that is often what I am more interested in because that is often what the case not yet filed is going to be about.

I am deeply committed to my classes and to you as my students. I will work very hard to make these materials understandable, relevant, and engaging for you, and to support you as students and as individuals in the process of becoming members of our noble profession. If I am doing my job well, I will challenge you in the process in a way that will deepen your understanding of state constitutional law, the law in general, and perhaps yourself as a person as you situate yourself within the challenging terrain of constitutional law.

If this is what you are looking for, great. We will have a wonderful experience this semester. If not, I would encourage you to consider taking another course. There are many other good electives you can take to get the credit you require. Please be honest with yourself about why you are here and what you want to get out of this class, and make your decisions about the class accordingly. I will respect those choices and not be offended.

Finally, I have a small favor to ask: There is a tradition at the law school of students giving standing ovations to professors at the end of their classes. I do not particularly like this tradition as it too often seems pro forma and insincere. If you would like to show me how much you like the class, participate in class and work hard on your paper and presentation.

Statement on Political Views: Much of your first year involved private law – torts, contract, property for example – which is how law regulate private relationships. These areas are largely immune from political forces, at least theoretically.

That is not the case with public law, the law that regulates the government and its relationship with the people. Public law necessarily takes place within the public realm, and therefore must take into account, and be accountable to, the body politic. This is proper in a societal regime committed to democratic self-governance and the rule of law.

Each of us will certainly have a perspective on questions raised by the materials we will discuss. I want, and expect, you to articulate your views, just as I will articulate mine from time to time. I also want you to know that I have no expectation or desire for your views to conform with mine. In fact, I very much hope that the views expressed in this class transcend the political spectrum because it will make for a much more engaging classroom dynamic and a better learning experience for everyone.

My one caveat is that I expect you to articulate your views like a lawyer – thoughtful, reasoned, and respectful; not mere sloganeering – and be prepared to answer the question “Why?” You can expect the same of me. In my opinion, learning how to talk about issues that are intensely charged and subject to fierce political disagreement is every bit as important as the substantive content of this course. Use this class as an opportunity to develop or improve your game.

Comment on these Challenging Times: This is a very tough time to be a law student. It’s a very tough time to be or do anything. It’s just a tough time.

In my view, however, tough times are the nature of life in the law, even during good times. In a variety of ways, many of my academic colleagues are lowering their expectations for law students because of the tough situation you are in.

In all candor, I am not, for I believe doing so would sell you short as students and as people, and deprive you of the opportunity to learn what you will need to survive and thrive as a lawyer well after the pandemic is over. Grit and resilience in the face of adversity is what forges the metal of a lawyer. Adaptability, resourcefulness, creativity, and the ability to solve problems -- in the heat of the moment and with a positive and constructive attitude -- are the hallmarks of successful lawyers “in the real world.”

There is no question you have been dealt a tough hand. However, it is no tougher than the hand you will be dealt when the deck of your professional development is reshuffled after you graduate, pass the bar, and enter practice.

Much of life depends on how we approach and respond to it. My humble suggestion is to view the challenges you face this year as the opportunity they present rather than the barriers they can be. If you do, my sense is that many years down the road, when you look back on your career, you will be grateful for having been in law school during these difficult times. That is my personal experience of adversity, and my hope for each of you as we enter the semester.

Schedule of Classes

*Page references are to Sutton et al., State Constitutional Law.

Topic 1: Dual Sovereignty

- A. Chapter XVII. The Framing of State Constitutions (931-953)
- B. Sources of Federal and State Powers (7-32)
- C. Limitations on Federal Power (33-44)
- D. Federal Limitations on State Power (58-67)

Topic 2. Theories of Divergent Constitutional Interpretation

- A. Similarly Worded Guarantees (91-107)
- B. Differently Worded Provisions (107-114)

- C. Comparative Scope of State Provisions (114-117)
- D. Independent and Adequate State Grounds (117-127)
- E. Sequencing in Dual Claims Cases (127-137)

Topic 3. Organization of State Governments

- A. Chapter XVII. The Framing of State Constitutions (953-969)
- B. Legislative Power (762-766)
 - Mo. Const. Art. III
- C. Executive Power (766-785)
 - Mo. Const. Art. IV
- D. Judicial Power (785-829)
 - Mo. Const. Art. V

Topic 4. Amendment of State Constitutions

- A. Chapter XVII: The Framing of State Constitutions (971-991)
- B. Altering State Constitutions (881-895)
 - Mo. Const. Art. XII
- C. Initiatives (895-898)
- D. Constitutional Convention (899-904)
- E. Procedural Requirements (904-913)
- F. Constitutional Commissions (913-919)
- G. Legislation by Voter Initiative (919-926)

Topic 5. Missouri Specific Constitutional Rights: TBD. Student Presentations

Disclosures

Statement on COVID-19

MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. This statement will be updated as information changes. **If you need an educational accommodation because of COVID, please contact your instructor directly.**

- **If you are experiencing any COVID-related symptoms**, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.
- We will all wear **face coverings while in the classroom**, unless you have a documented exemption due to a disability or medical condition.
- We will maintain a **6-foot distance from each other at all times** (except in specific lab/studio courses with other specific guidelines for social distancing).
- We will enter the classroom and **fill the room starting at the front, filing all the way across a row**. When class ends, we will exit the row nearest to the door first; the instructor or TA will give the signal for the next row to exit, in the same manner.
- In any small section or lab class that requires them, **additional measures will be listed in the syllabus and be mandatory for class participation.**
- Online office hours will be available for all students.

- This course may be recorded for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the accountability process, as stated in the University's Collected Rules and Regulations, Chapter 200 Student Code of Conduct.

If an instructor has concerns about how a student is following COVID-19 policies and protocols, please report those concerns to the Office of the Dean of Students. You can fill out a COVID Safety Measures Reporting Form

here: https://cm.maxient.com/reportingform.php?UnivofMissouriSystem&layout_id=38

By taking the above measures, we are supporting your health and that of the whole Mizzou community. Thank you in advance for joining me and your peers in adhering to these safety measures.

Statement on Recording of Class

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

Statement Regarding Mental Health

The University of Missouri is committed to supporting student well-being through an integrated network of care, with a wide range of services to help students succeed. The MU Counseling Center offers professional mental health care, and can help you find the best approach to treatment based on your needs. Call to make an appointment at 573-882-6601. Any student in crisis may call or go to the MU Counseling Center between 8:00 – 5:00 M-F. After hours phone support is available at 573-882-6601.

Visit our website at <https://wellbeing.missouri.edu> to take an online mental health screening, find out about workshops and resources that can help you thrive, or learn how to support a friend. Download Sanvello, a phone app that teaches skills and strategies to help you maintain good mental health. Log in with your Mizzou e-mail to unlock all the tools available through Sanvello at no cost to you.

Statement Regarding Americans with Disabilities Act

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. This sample statement is posted on the web at: <http://provost.missouri.edu/faculty/syllabus.html> and at <http://disabilityservices.missouri.edu/faculty/syllabus.php>.

If disability-related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 573- 882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

Statement Regarding Academic Dishonesty

Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Statement Regarding Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact the Dean's Office, the Director of the Office of Students Rights and Responsibilities <http://osrr.missouri.edu/> or the MU Equity Office (equity@missouri.edu). All students will have the opportunity to submit an anonymous evaluation of the instructor(s) at the end of the course.