CONSTITUTIONAL LAW
POLITICAL SCIENCE 426/526
FALL 2009

Professor: Julie Novkov
E-mail: jnovkov@albany.edu

Downtown Office: Milne 306
Downtown Office Phone: 442-5279
Downtown Office Hours: by appointment

Uptown Office: 16 Humanities
Uptown Office Phone: 442-3112
Uptown Office Hours: 9-12 M

COURSE DESCRIPTION

This is a survey course for undergraduates and graduate students who are interested in understanding more about how the Constitution works as a structure for government. It is offered for writing credit as well. We will focus on how the federal courts, and in particular the Supreme Court, interact within our system of government. We will not be addressing questions of civil liberties directly, although some of the materials we will consider touch on these areas.

The course is organized historically. We will discuss constitutional structure and constitutional interpretation, and then move through an analysis of the major periods in American constitutional development from the founding through the present. The course has a slight emphasis on executive authority, but covers constitutional development comprehensively.

REQUIREMENTS

Is this class right for me? This course will involve significant reading and writing requirements, probably among the highest you will encounter in the POS department. You will be expected to complete all of the reading and to attend all of the lectures. Students who have tried in the past to get by through either doing the reading or coming to lectures have traditionally been unhappy with their final grades. The course demands a lot, but delivers a lot in return, in proportion to the effort you put into it. That being said, effort alone will not get you an A. Only outstanding performances on the various assignments will get you into the A range for this course. Of course, effort is not irrelevant in establishing outstanding performance!

Students will be expected to attend class and participate in class discussions. Constructive, informed, respectful participation that contributes directly to conversations about the course material will raise borderline grades; lack of participation or consistently disruptive participation may result in lower grades. Class participation and attendance will constitute 10% of your grade. The baseline grade for class participation is a B, so a student who does not miss class but never participates in discussions can expect to get a B for this component of the course. You will be expected to keep up with the reading throughout the term. You will not be able to do well on the assignments or examinations without both attending lectures and doing the reading.

Students will also be expected to complete a major writing assignment. The assignment is to write an argumentative essay, guidelines for which will be distributed early in the term. You will
write the essay in two drafts, both of which will be graded. The final draft will be due at the end of the term. The essay will be in the form of a judicial opinion in a hypothetical case about a conflict over the scope of executive authority during emergencies. There will be no “right” ruling in the case; you will be graded on your ability to argue effectively using the precedents and techniques we learn in the class.

The class will also have four examinations, three quizzes and a final. You will be expected to keep up with the reading throughout the term. If it becomes clear that the members of the class are not preparing adequately, the professor reserves the right to administer additional unannounced quizzes. The regular quizzes are intended primarily to assist you in preparing for the types of questions that will appear on the final examination.

The allocation of weight for your various obligations is as follows:

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Weight</th>
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<tbody>
<tr>
<td>Rough Draft of Paper</td>
<td>5%</td>
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<tr>
<td>Final Draft of Paper</td>
<td>35%</td>
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<tr>
<td>Quiz One</td>
<td>5%</td>
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<tr>
<td>Quiz Two</td>
<td>5%</td>
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<tr>
<td>Quiz Three</td>
<td>5%</td>
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<tr>
<td>Class Participation</td>
<td>10%</td>
</tr>
<tr>
<td>Final examination</td>
<td>35%</td>
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</tbody>
</table>

POLICIES

_Students with disabilities._ If you have a documented disability and anticipate needing accommodations in this course, please make arrangements to meet with the professor soon. Please request that Disabilities Resource Center send a letter verifying your disability.

_Extensions for papers._ Extensions for papers will only be permitted under compelling circumstances and if the extension is requested in advance. Any student who does not turn in her or his paper on time and has not contacted the professor in advance will lose a half grade per day for every day the paper is late unless the student can provide a University-approved excuse.

_Class attendance._ You will be expected to attend class. Each student is permitted to miss two days of class per term with no questions asked and no penalties or reductions in his or her class participation grade. Any classes missed beyond those two will be taken into account in determining your class participation grade, regardless of the reason.

_Regrading of materials._ You may request regrading of materials. If you wish to make such a request, contact the professor for a copy of the regrading policy. You will be asked to provide a written explanation of why you wish to have the assignment regraded.

_Plagiarism or cheating._ This one’s simple: don’t do it. Don’t even think about doing it. Plagiarism is the use of someone else’s words or ideas without giving the original author credit by citing him or her. If you use someone else’s language directly, you must use quotation marks. If you rely on another person’s ideas in creating your argument, you must provide a citation. If you have any questions about plagiarism, please contact me before you submit the assignment for grading. If you plagiarize or cheat in this class, the BEST outcome you can hope to achieve is a failing grade from me, in addition to any mandatory university sanctions. Plagiarism or cheating, even if unintentional, will result in a failing grade for the assignment at the very minimum.
The text for the course is *American Constitutionalism Volume I: Structures of Government*, by Howard Gillman, Mark Graber, and Keith Whittington. This is a very new textbook for constitutional law classes – so new, in fact, that it is not yet available for purchase as a bound volume. You have two options for getting access to the materials we will read. One is to pick up the book as a course packet. It is available for purchase at Mary Jane’s. The other is to get access to the entire book and a few supplemental cases on the course’s Blackboard site. To log on to Blackboard, go to [http://bls.its.albany.edu/webct/entryPageIns.dowebct](http://bls.its.albany.edu/webct/entryPageIns.dowebct) and follow the login instructions. A few additional materials will be available on the Blackboard site. **IMPORTANT NOTE: You will need to use Blackboard to research your papers and get copies of course materials.**

**SYLLABUS**

(NO.)TE: This syllabus is intended to be a guideline. If we get substantially behind, a few topics may be omitted.)

**The Roots of the Constitution and Constitutional Interpretation**

September 1: Introduction and group activity

*Introduction*

- American Constitutionalism, Introduction (hereinafter AC), 36-60

September 3: No class due to APSA meeting

- Continue reading AC Chapter One
- AC Appendix 1 (US Constitution), 1503-1518
- AC Appendix 2 (Doing Legal Research and Reading Supreme Court Cases), 1519-1529
- How to Read a Case (on Blackboard)*

**Foundational History**

September 8: Constitutional Interpretation, Authority, and Change

*Introduction: The Colonial Era*

- Separation of Powers
- Judicial Power
- AC Chapter 2, 61-64; 74-84

September 10: Colonial Era-Founding

*Founding Era: Introduction*

- Iredell, To the Public
- Brutus 11
- Brutus 12
- Federalist 78

*Other Issues*

- Resolves of the Concord Town Meeting
- Jefferson, Notes on the State of Virginia
Wilson, Pennsylvania Ratification Speech
Federalist 84
• AC Chapter 3, 90-96; 144-162

September 15: The Early National Period and the Rise of National Power
Introduction: The Federalist/Jeffersonian Era
The Necessary and Proper Clause
Debate on the Bank of the United States
Jefferson’s Opinion
Hamilton’s Opinion
McCulloch v. Maryland
Roane and Marshall on McCulloch v. Maryland
Quaker Petition on Slavery
• AC Chapter 4, 1-38

September 17: Delineating the Scope and Limits of National Power
Gibbons v. Ogden
Sovereign Immunity
Chisholm v. Georgia
The Eleventh Amendment
State Authority to Interpret the Constitution
Virginia and Kentucky Resolutions
Massachusetts Resolution
Virginia Report
• AC Chapter 4, 64-70; 77-89

September 22: Defining Judicial Authority
Defining Judicial Power
Judiciary Act of 1789
Calder v. Bull
Marbury v. Madison
• AC Chapter 4, 110-115; 123-134

September 24: State Power and the Transition to Jacksonianism
Federal Review of Statutes
Fletcher v. Peck
Martin v. Hunter’s Lessee
Introduction: The Jacksonian Era
• AC Chapter 4, 138-149
• AC Chapter 5, 350-358

September 29: The Developing Confrontation over Slavery
The Fugitive Slave Clause
Prigg v. Pennsylvania
Dred Scott v. Sandford
• AC Chapter 5, 378-396

October 1: Constitutional Failure: Slavery and Indians
Nullification
Calhoun, Fort Hill Address
Webster, Speech on Nullification
October 6: Secession and Civil War
Introduction: Secession, Civil War, and Reconstruction
Secession
South Carolina Ordinance
Davis, The Right of Secession
Black, Opinion on the Power of the President
Lincoln, First Inaugural Address
Lincoln, Fourth of July Message to Congress
Martial Law and Habeas Corpus
Ex Parte Merryman
Bates, Opinion on Suspension of Habeas
Lincoln, Proclamation
Act Relating to Habeas Corpus
Ex Parte Milligan

October 8: War and Reconstruction
The Emancipation Proclamation
The Impeachment of Andrew Johnson
Tenure of Office Act
Impeachment
Judicial Power
Republicans Reorganize the Federal Judiciary
Lincoln on Departmentalism
Ex Parte Merryman
Jurisdiction and Martial Law
Ex Parte McCardle
Ex Parte Yeager

October 13: Redefining Nationhood
Introduction: The Republican Era
Brewer, The Nation's Safeguard
Federal Power to Enforce Civil Rights
Civil Rights Cases
Congressional Debates on Lynching

October 15: Republican Era Conceptions of Commerce
Power to Regulate Commerce
Senate Debate on the Sherman Anti-Trust Act
United States v. E.C. Knight Company
Correspondence on the Pullman Strike
In re Debs
Federalism, the Sherman Act, and Unions
Champion v. Ames
McCray v. United States
Hoke v. United States
Hammer v. Dagenhart
• AC Chapter 7, 716-742

October 20: Republican Era Struggles over Federalism
Dormant Commerce Clause
Wabash, St. Louis & Pacific Railroad v. Illinois
Police Powers
Thomas Cooley, Constitutional Limitations
Munn v. Illinois
• AC Chapter 7, 778-783; 790-796

October 22: The Rise of the New Deal and the Commerce Revolution
Introduction: The New Deal and the Great Society
Powers of the National Government
Schechter Poultry Co. v. United States
Carter v. Carter Coal
NLRB v. Jones & Laughlin Steel Corp.
United States v. Darby
Wickard v. Filburn
Memorandum on Wickard
• AC Chapter 8, 911-924; 934-965

October 27: From New Deal to Great Society
Federal Power to Enforce Civil Rights
Truman, Message to Congress
Debate over the Civil Rights Act of 1964
Heart of Atlanta Motel v. United States
South Carolina v. Katzenbach
Katzenbach v. Morgan
• AC Chapter 8, 965-989

QUIZ TWO TODAY

October 29: World War II and Presidential Power in Military Conflict
Hirabayashi v. United States
Ex parte Quirin
Korematsu v. United States
Ex parte Endo
• AC Chapter 8, 1067-1073; 1080-1093

November 3: Reconfiguring Executive Power
Youngstown Sheet & Tube Co. v. Sawyer
• AC Chapter 8, 1035-1051

November 5: Judicial Supremacy
Judicial Supremacy
Roosevelt, Undelivered Speech
Roosevelt, Fireside Chat on the Court-Packing Plan
Judiciary Committee Report
Ashwander v. TVA
United States v. Carolene Products
Southern Manifesto
• AC Chapter 8, 1121-1137

November 10: Articulating Thresholds for Constitutional Decision-making
Threshold Questions
Standing
Poe v. Ullman
Flast v. Cohen
Political Questions
Baker v. Carr
• AC Chapter 8, 1142-1158; 1163-1174

November 12: The Contemporary Era: Rethinking the Commerce Clause
Introduction: Constitutional Debates in the Contemporary Era
Reagan, Inaugural Address
Contract With America
Clinton, Fourth Annual Message
Powers of the National Government (Commerce Shifts)
Reagan, Remarks
United States v. Lopez
Gonzales v. Raich
• AC Chapter 9, 1219-1247

November 17: Limits on Congressional Power
United States v. Morrison
Nevada Dept. of Human Resources v. Hibbs
South Dakota v. Dole
Rumsfeld v. FAIR
• AC Chapter 9, 1247-1263
ROUGH DRAFT OF PAPER DUE TODAY

November 19: Federalism and State Autonomy
Garcia v. San Antonio Metropolitan Transit Authority
US Term Limits v. Thornton
Printz v. United States
• AC Chapter 9, 1264-1292

November 24: Executive Authority in Times of Crisis
Yoo, President’s Authority
Memoranda on Standards of Conduct
Hamdi v. Rumsfeld
Hamdan v. Rumsfeld
• AC Chapter 9, 1361-1377; 1383-1403
QUIZ THREE TODAY

December 1
Continued Debate over the War on Terror
• Boumediene v. Bush
• El Masri v. United States
December 3: Contemporary Debates over Judicial Authority

The Living Constitution Debate
Constitution in Exile
District of Columbia v. Heller and Winter v. NRDC
  • AC Chapter 9, 1486-1497
  • District of Columbia v. Heller
  • Winter v. NRDC

FINAL DRAFTS OF PAPERS DUE TODAY

FINAL EXAMINATION: Wednesday December 9, 10:30 AM-12:30 PM