CONSTITUTIONAL LAW
POLITICAL SCIENCE 426/526
SPRING 2013
Professor: Ann Johnson
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Class Hours 1:40 PM - 2:35 PM
Downtown Office: Milne 203 Uptown Office: 16 Humanities
Downtown Office Phone: 442-5279 Uptown Office Phone: 442-5263
Downtown Office Hours: by appointment Uptown Office Hours: M W 12:30-1:30

COURSE DESCRIPTION

The law is a system of rules and procedures designed for the common good of a particular nation or society. The stability of our democracy is largely due to our collective faith in the U.S. legal system and the separation of powers between the branches of government. This undergraduate/graduate course examines the origins of the U.S. Supreme Court as a separate branch and how the Constitution works as a structure for government. This course does not focus on civil liberties directly. However, some of the materials will relate to civil rights issues.

In this course you will:

- learn case analysis and gain an understanding of constitutional interpretation
- read milestone cases and foundational material from significant periods in U.S. history
- examine how the federal judicial system, and in particular the Supreme Court, interacts within our system of government
- access how legal precedent is applied to cases through different periods of time
- analyze the power relationship between the governmental branches and the role of the Constitution
- gain knowledge of legal terminology and improve writing skills

***Students may also receive writing credit for this course.***

REQUIREMENTS

This is a challenging upper level course. It is necessary for students to keep up with all readings. Students are also expected to attend all classes and come prepared for an informed discussion. Because this is an upper level course, in order to receive a high grade, students will need to put in both effort and outstanding work.
This course requires a major paper. The details for this assignment will be given out at a later date. Students will write two drafts, both of which will be graded. The final draft will be due at the end of the term. Generally, the paper will be written as a judicial opinion in a hypothetical case about a conflict over the scope of executive authority during emergencies. I am not looking for a particular answer to the question raised but whether students display the ability to effectively use precedents and legal analysis.

The class will also have three quizzes and a final exam. You will be expected to keep up with the reading throughout the term. If it appears that the students are not coming to class prepared, the professor reserves the right to administer additional pop reading quizzes.

**ASSESSMENT/GRADING**

- Rough Draft of Paper 5%
- Final Draft of Paper 35%
- Quiz One 5%
- Quiz Two 5%
- Quiz Three 5%
- Class Participation 10%
- Final examination 35%

**POLICIES**

Announcements and instructions will periodically be posted on Blackboard.

**Academic Conduct:**
All work turned in is expected to be your own work. Students must follow the Academic Code of Conduct. Any violation of this standard will be reported to the Office of Judicial Affairs.

**ADA Statement:**
If you have a need for disability-related accommodations or services, please inform me or the coordinator of the Disabilities Resource Center. Reasonable and effective accommodations and services will be provided to students if requests are made in a timely manner, with appropriate documentation, in accordance with university guidelines.

**Cell Phone Policy:**
Please turn off your cell phone while in class. If you have extenuating circumstances, inform me prior to class, put the phone on silent (not vibrate) and refrain from texting. This will allow you and the other students to focus on what is occurring in the class. It will afford everyone a break from the outside world and an opportunity to connect with and learn from the professor and each other.

**Late Work Policy:**
Assignments are due at the beginning of class. Each day an assignment is late there is a 10% reduction in the grade. After five days the assignment will no longer be accepted.
Attendance:
This class requires student attendance. Students may miss three classes without a medical excuse. Any classes missed after those three may result in a decrease in participation grades.

MATERIALS

The text for the course is American Constitutionalism Volume I: Structures of Government, by Howard Gillman, Mark Graber, and Keith Whittington.

SYLLABUS
(The course schedule is subject to change as necessary).

The Roots of the Constitution and Constitutional Interpretation
January 23: Introduction and review of syllabus

January 25: American Constitutionalism, Introduction (hereinafter AC), 36-60

January 28: 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

Foundational History
January 30: Constitutional Interpretation, Authority, and Change
   Introduction: The Colonial Era
   Separation of Powers
   Judicial Power
      AC Chapter 2, 61-64; 74-84

February 1: Colonial Era-Founding
   Founding Era: Introduction
   Judicial Power
   Iredell, To the Public
   Brutus 11
   Brutus 12
   Federalist 78

February 4: 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

February 8 & 11: 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
February 13 & 15: 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

February 18: Defining Judicial Authority

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

February 20: 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

February 22

QUIZ ONE
The Developing Confrontation over Slavery
The Fugitive Slave Clause
Prigg v. Pennsylvania
Dred Scott v. Sandford
  AC Chapter 5, 378-396

February 25 & 27: Constitutional Failure: Slavery and Indians

Nullification
Calhoun, Fort Hill Address
Webster, Speech on Nullification
Jackson, Proclamation on Nullification
States and Indian Tribes
Worchester v. Georgia
  AC Chapter 5, 418-431

March 1 & 4 & 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
March 8 & 11 & 13: 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
AC Chapter 6, 634-636; 648-664; 669-676

March 15: TBA

March 18-March 22: NO CLASS SPRING BREAK

March 25
QUIZ TWO
Redefining Nationhood
Introduction: The Republican Era
Brewer, The Nation’s Safeguard
Federal Power to Enforce Civil Rights
Civil Rights Cases
Congressional Debates on Lynch ing
AC Chapter 6, 559-562
AC Chapter 7, 683-691; 694-707

March 27 & 29: 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

April 1: 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
April 3: 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

April 5: 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

April 8: 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

April 10: Reconfiguring Executive Power and Judicial Supremacy
Youngstown Sheet & Tube Co. v. Sawyer
   AC Chapter 8, 1035-1051
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

April 12: 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

April 15 & 17: 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
Reagan, Remarks
United States v. Lopez
Gonzales v. Raich
United States v. Morrison
   AC Chapter 9, 1219-1253

April 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

ROUGH DRAFT OF PAPER DUE TODAY

April 22: 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

April 24:
QUIZ THREE
Continued Debate over How to Balance Military Necessities
   Boumediene v. Bush
   El Masri v. United States
   Winter v. NRDC

April 26: Current Issues with the Branches’ Authority
The Living Constitution Debate
Constitution in Exile
   AC Chapter 9, 1486-1497
   Kucana v. Holder
   United States v. Comstock

April 29: The Second Amendment Revival
   District of Columbia v. Heller
   Sears v. Upton

May 1 & 3: Paper Conferences

May 7: FINAL DRAFTS OF PAPERS DUE TODAY
Exam Review

FINAL EXAMINATION: Exam Week TBA