COURSE DESCRIPTION

This is the graduate version of Constitutional Law, designed for graduate students who are interested in understanding more about how the Constitution works as a structure for government, with particular emphasis on thinking about how to teach these topics to undergraduates. It is offered as a two-credit or four-credit option. We will focus on how to teach about how the federal courts, and in particular the Supreme Court, interact within our system of government.

The undergraduate course as I teach it is organized historically. As the undergraduates discuss constitutional structure and interpretation and move through the major periods in American constitutional development from the founding through the present, we will think about the advantages and disadvantages of organizing the course this way. The course has a slight emphasis on executive authority, but covers constitutional development comprehensively. The topics listed below for our separate weekly discussions are merely suggestions; we will adjust as we collectively see fit.

REQUIREMENTS

*Is this class right for me?* This course is primarily directed toward public law majors and minors in political science, but has something to offer to graduate students studying other fields as well as students concentrating in other disciplines. The focus of our separate meetings will be on teaching, but you will also learn about the constitution as an evolving structure for channeling and managing authority and bounding social organization. If both of these agendas are of interest, the course is probably appropriate.

Graduate students will be expected to attend class and participate in class discussions, both those in the undergraduate course meetings and our separate sessions, which we will schedule about once per week for an hour. 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. You will be expected to keep up with the reading throughout the term so that you can participate effectively. Graduate students will complete a few additional readings beyond those expected of undergraduate students.
The other requirements differ depending upon whether you are taking the two- or four-credit version of the course. Students registered for two credits are expected to complete all of the readings, design a writing assignment for a constitutional law class, and design a syllabus for a constitutional law class. The four-credit option requires students to complete these assignments, but also to write a book review of a constitutional law text (see http://www.bsos.umd.edu/gvpt/lpbr/casebook.html for examples) and to teach one session of 426 which we will then discuss as a group afterward. (For the most part, you can choose which class you want to teach; I reserve only Marbury and Dred Scott for myself.) The weight placed on the various assignments is allocated as follows:

<table>
<thead>
<tr>
<th>Two Credits</th>
<th>Four Credits</th>
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<tbody>
<tr>
<td>Class Participation</td>
<td>10%</td>
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<tr>
<td>Writing Assignment</td>
<td>30%</td>
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<tr>
<td>Syllabus</td>
<td>80%</td>
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<tr>
<td>Class Participation</td>
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<tr>
<td>Writing Assignment</td>
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<td>Syllabus</td>
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<tr>
<td>Book review</td>
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<tr>
<td>Class lecture/facilitation</td>
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**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 assignments.* 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.
MATERIALS

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. **IMPORTANT NOTE: You will need to use Blackboard to research your papers and get copies of course materials.**

SYLLABUS

**(NOTE: 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

**NOTE: DUE TO MY APSA SCHEDULE, YOU GUYS WILL RUN THIS ONE, USING MATERIALS I HAVE PREPARED.**

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

**WEEKLY DISCUSSION: GOOD BEGINNINGS; CON DEVELOPMENT VERSUS LAW SCHOOL**

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*

*Judicial Power*

- Iredell, To the Public
- Brutus II
**WEEKLY DISCUSSION: HOW TO ADDRESS KNOWLEDGE GAPS**

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

**NO WEEKLY DISCUSSION**

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

**WEEKLY DISCUSSION: ACADEMIC DISHONESTY**

September 29: The Developing Confrontation over Slavery

- *The Fugitive Slave Clause*
October 1: Constitutional Failure: Slavery and Indians
Nullification
- Calhoun, Fort Hill Address
- Webster, Speech on Nullification
- Jackson, Proclamation on Nullification
- States and Indian Tribes
- Worcester v. Georgia
- AC Chapter 5, 378-396

WEEKLY DISCUSSION: DESIGNING EVALUATIVE TOOLS THAT WORK

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
- AC Chapter 6, 507-510; 564-580; 619-634

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
- AC Chapter 6, 634-636; 648-664; 669-676

WEEKLY DISCUSSION: TEACHING WRITING TO UNDERGRADUATES

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 6, 559-562
- AC Chapter 7, 683-691; 694-707

**WEEKLY DISCUSSION: GRADE COMPLAINTS AND OTHER ISSUES WITH AUTHORITY**

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

**WEEKLY DISCUSSION: STUDENTS IN CRISIS**

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

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

WEEKLY DISCUSSION: POLITICS IN THE CLASSROOM

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

NO DISCUSSION: WRITING ASSIGNMENT WORKSHOP

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

WRITING ASSIGNMENT DUE

WEEKLY DISCUSSION: STUDENTS WITH DISABILITIES

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

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

**NO WEEKLY DISCUSSION**
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

**WEEKLY DISCUSSION: STUDENT EVALUATIONS**
December 1
Continued Debate over the War on Terror
- Boumediene v. Bush
- El Masri v. United States

**BOOK REVIEW DUE (4 credits only)**

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

**TURN IN SYLLABUS IF YOU WOULD LIKE FEEDBACK**

**FINAL SYLLABUS DUE: Wednesday December 9 by 5:00 PM**