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 the principles and practical problems that produced the constitution, and then move through an analysis of the major periods in American constitutional development from the founding through the present. The course covers constitutional development comprehensively.

REQUIREMENTS

Is this class right for me? This course will involve significant reading and writing requirements, at probably among the highest level of difficulty 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 be rewarded; 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 Congress’s authority to enact legislation implementing a treaty. 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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**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.
MATERIALS

The text for the course is *American Constitutionalism Volume I: Structures of Government*, by Howard Gillman, Mark Graber, and Keith Whittington, which is available for purchase at the bookstore and at Mary Jane’s. I will post a few supplemental cases on the course’s Blackboard site. To log on to Blackboard, go to [https://blackboard.albany.edu/](https://blackboard.albany.edu/) and follow the login instructions. I will also post assignments on the Blackboard site. IMPORTANT NOTE: You will need to use Blackboard to research your papers.

SYLLABUS

(NOTE: This syllabus is a guideline. If we get substantially behind, a few topics may be omitted. I will never quiz you on material that we have not yet covered in class, but all quizzes will take place on dates scheduled in the syllabus.)

The Roots of the Constitution and Constitutional Interpretation

January 23: Introduction

*Introduction*

- American Constitutionalism, Introduction (hereinafter AC), 3-26
- AC Appendix 1 (US Constitution), 715-729
- AC Appendix 2 (Researching and Reading Government Documents), 729-739
- How to Read a Case (on Blackboard)*

Foundational History

January 28: The Colonial Era and the Build Up to Revolution

*The Colonial Era: Introduction*

- Judicial Power and Constitutional Authority
- Powers of the National Government
- Separation of Powers
- AC Chapter 2, 31-35, 39-40, 43-46

January 30: The Founding

*Founding Era: Introduction*

- Judicial Power
  - Robert Yates, “Brutus”
  - Federalist 78
- Powers of the National Government
  - Articles of Confederation
  - Virginia and New Jersey Plans
  - Article I, Section 8
  - Federalist 1, 10, and 23
- Slavery
- AC Chapter 3, 49-61, 64-71, 71-78

The Antebellum Era

February 4: The Early National Period and the Rise of National Power

*Introduction*

- Judicial Power
Calder v. Bull
Marbury v. Madison
Jefferson on Departmentalism
- AC Chapter 4, 93-99, 101-113

February 6: Early Problems in Federalism
Martin v. Hunter’s Lessee
Sovereign Immunity
Chisholm v. Georgia
The Eleventh Amendment
State Authority to Interpret the Constitution
Virginia and Kentucky Resolutions
- AC Chapter 4, 115-118, 156-166

February 11: Delineating the Scope and Limits of National Power
Necessary and Proper Clause
Territorial Acquisition
Gibbons v. Ogden
- AC Chapter 4, 122-137, 139-145; 149-153

February 13: State Power and the Transition to Jacksonianism
Introduction
Judicial Structure and Selection
Necessary and Proper Clause
- AC Chapter 5, 185-196, 200-206

QUIZ ONE

February 18: The Developing Confrontation over Slavery
The Fugitive Slave Clause
Prigg v. Pennsylvania
Dred Scott v. Sandford
- AC Chapter 5, 208-211, 216-221

February 25: Constitutional Failure: Slavery and Indians
State Authority to Interpret the Constitution
Worchester v. Georgia
- AC Chapter 5, 228-233

The Civil War and Reconstruction
February 27: Secession and Civil War
Secession
South Carolina Ordinance
Black, Opinion on the Power of the President
Lincoln, First Inaugural Address
Lincoln, Fourth of July Message to Congress
Status of the Southern States
- AC Chapter 6, 249-251, 277-282, 285-294

March 4: War and Reconstruction
Constitutional Litigation
Mississippi v. Johnson
March 6: Redefining Nationhood

Introduction: The Republican Era
Brewer, The Nation’s Safeguard
Federal Power to Enforce Civil Rights
Civil Rights Cases
Congressional Debates on Lynching

- AC Chapter 7, 319-327, 347-354

The Republican Era and the New Deal Revolution

March 11: Republican Era Conceptions of Commerce

Power to Regulate Commerce

- Senate Debate on the Sherman Anti-Trust Act
- United States v. E.C. Knight Company
- Federalism, the Sherman Act, and Unions
- Champion v. Ames
- McCray v. United States
- Hoke v. United States
- Hammer v. Dagenhart
- Bailey v. Drexel Furniture Company

- AC Chapter 7, 354-366, 376-377

March 13: Treaty Power and Federalism

Treaty Power
- Missouri v. Holland

Police Powers
- Thomas Cooley, Constitutional Limitations
- Munn v. Illinois

- AC Chapter 7, 377-379, 396-401

QUIZ TWO TODAY

March 25: The Rise of the New Deal and the Commerce Revolution

Introduction
Judicial Review

- United States v. Carolene Products
- Franklin Roosevelt, Fireside Chat on Court-Packing
- Senate Judiciary Committee Report
- The Southern Manifesto
- Dwight Eisenhower, Address to the Nation
- Cooper v. Aaron

- AC Chapter 8, 417-423, 429-431, 433-442

March 27: Commerce Power in Transition

Power to Regulate Commerce

- Schechter Poultry Co. v. United States
- NLRB v. Jones & Laughlin Steel
Wickard v. Filburn
Justice Robert Jackson, Memo on Wickard

- AC Chapter 8, 460-471

April 1: The New Civil Rights Order
Federal Power to Enforce Civil Rights
- Debate over the Civil Rights Act of 1964
- Heart of Atlanta Motel v. United States
- South Carolina v. Katzenbach
- AC Chapter 8, 471-488

April 3: Separation of Powers and Non-Delegation
Youngstown Sheet & Tube Co. v. Sawyer
United States v. Curtiss-Wright Export
- AC Chapter 8, 493-502, 507-509

April 8: Judicial Supremacy and Treaty Powers
Ashwander v. TVA
Reid v. Covert
- Cases available on Blackboard

April 10: Taxpayer Standing and Judicial Power
- Declaratory Judgments
- Flast v. Cohen
- Baker v. Carr
- Powell v. McCormack
- Laird v. Tatum
- AC Chapter 8, 442-456
- AC Chapter 9, 520-527

April 15: NO CLASS

Contemporary Constitutional Controversies
April 17: Rethinking Federalism and the Role of the Judiciary
Introduction
- Reagan, Inaugural Address
- Edwin Meese, The Law of the Constitution
- Garcia v. San Antonio Metro Transit Authority
- AC Chapter 10, 563-571, 589-594

April 22: Federalism and State Autonomy
- United States v. Lopez
- Gonzales v. Raich
- United States v. Morrison
- AC Chapter 11, 637-657

ROUGH DRAFT OF PAPER DUE TODAY

April 24: Judicial Power and Constitutional Authority
- City of Boerne v. Flores
- Massachusetts v. EPA
- AC Chapter 11, 621-624, 629
April 29: Separation of Powers
Sharing the Legislative Power
  Immigration and Naturalization Service v. Chadha
  Clinton v. City of New York
• AC Chapter 10, 597-602
• AC Chapter 11, 677-681
QUIZ THREE TODAY

May 1: The Expansion of Presidential Power
Walter Dellinger, Presidential Authority
Note: The Bush Administration and Presidential Signing Statements
John Yoo, President’s Constitutional Authority
Memoranda on Standards of Conduct
Caroline Krass, Memorandum Opinion on the Authority to Use Military Force in Libya
John Cornyn, Speech
• AC Chapter 11, 681-99

May 6: The Court Addresses War Powers
Hamdi v. Rumsfeld
Boumediene v. Bush
El Masri v. United States
• AC Chapter 11, 701-708
• Boumedene and El Masri available on Blackboard

May 8: Congress, the Constitution, and Health Insurance Reform
National Federation of Independent Businesses v. Sebelius
• Available on Blackboard
FINAL DRAFTS OF PAPERS DUE TODAY

FINAL EXAMINATION: Friday May 16, 1:00 – 3:00 PM