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 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, about a dozen of which we will schedule for an hour over the course of the semester (one on students with disabilities will be scheduled around a guest speaker). Constructive, informed, respectful participation that contributes directly to conversations about the course material will result in higher participation 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. I may assign a few additional readings beyond those expected of undergraduate students; if I do so, these readings will facilitate learning about pedagogy.

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 syllabus need not be historically organized). 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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</thead>
<tbody>
<tr>
<td>Class Participation</td>
<td>10%</td>
</tr>
<tr>
<td>Writing Assignment</td>
<td>30%</td>
</tr>
<tr>
<td>Syllabus</td>
<td>80%</td>
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<tr>
<td>Book review</td>
<td>20%</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/ and follow the login instructions. I will also post assignments for you and for the undergraduates on the Blackboard site.

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

WEEKLY DISCUSSION: GOOD BEGINNINGS; CON DEVELOPMENT VERSUS LAW SCHOOL

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

**WEEKLY DISCUSSION: HOW TO ADDRESS KNOWLEDGE GAPS**

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**

**WEEKLY DISCUSSION: DESIGNING EVALUATIVE TOOLS THAT WORK**

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
    - Ex Parte McCrady
  - Martial Law and Habeas Corpus
    - Ex Parte Merryman
The Emancipation Proclamation
The Impeachment of Andrew Johnson
• AC Chapter 6, 257-262, 297-301, 308, 313-316

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

WEEKLY DISCUSSION: TEACHING WRITING TO UNDERGRADUATES

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
WEEKLY DISCUSSION: ACADEMIC DISHONESTY

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

WEEKLY DISCUSSION: STUDENTS IN CRISIS

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

WEEKLY DISCUSSION: GRADE COMPLAINTS AND OTHER ISSUES WITH AUTHORITY

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

WEEKLY DISCUSSION: STUDENTS IN CRISIS

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 (Undergraduates)

April 24: Judicial Power and Constitutional Authority
NO DISCUSSION: WRITING ASSIGNMENT WORKSHOP

April 29: Separation of Powers
Sharing the Legislative Power
Immigration and Naturalization Service v. Chadha
Clinton v. City of New York

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

WEEKLY DISCUSSION: POLITICS IN THE CLASSROOM

May 6: The Court Addresses War Powers
Hamdi v. Rumsfeld
Boumediene v. Bush
El Masri v. United States

WEEKLY DISCUSSION: STUDENT EVALUATIONS AND HOW TO USE THEM