Class details

The American Constitution (POL-UA 9330)

Wednesdays, 1-4

Location to be confirmed.

Instructor Details

Jesse Merriam
jmerriam@gmail.com

Prerequisites

N/A

Class Description

This course will examine everything in the American Constitution except for its guarantee of individual rights, such as those enumerated in the Bill of Rights. In studying the governmental powers created and limited by the American Constitution, the course will be broken into three parts, with each section covering one of the three branches of the American political system – the judicial, legislative, and executive branches. The course will reveal the particular ways our understanding of each branch’s powers have constituted, and been constituted by, American practices of constitutional democracy. Our studies will also have a philosophical component, in exploring the fundamental nature of law and what it means for law to bind political actors. In addition, the course will have a distinctly legal dimension, drawing from Supreme Court opinions to illuminate how constitutional controversies are adjudicated. Through the course, therefore, students will come to see the political, philosophical, and legal features of American constitutional law, and the deep connections between among these components.

Desired Outcomes

As a result of completing this course, students should be able to:
1. Analyze and interpret judicial opinions through political, legal, and jurisprudential lenses.
2. Understand the basic legal doctrines that structure American constitutional law.
3. Develop their own views of the reciprocal relationship between how political factors influence judicial decisionmaking and how judicial decisionmaking shapes how the political process works.

Assessment Components

Participation: 10% of your final grade
Three Short (2-3 Page) Papers: 15% of your final grade
Midterm exam on ___ : 25% of your final grade
Final exam on ___ : 50% of your final grade

Assessment Grading of Participation:
Expectations

Your participation grade will be based on how often you: (1) come to class, and (2) participate in classroom discussion. Everyone will begin with a perfect score of 10/10 participation points, and points will be deducted only after failing in one of these two regards.

Grading of Three Short Papers:
The papers should be between 2 and 3 pages (typed, double-spaced, 12 font, with one-inch margins). Students must write each paper based on their listening to an oral argument for a case that we covered in class. Each selected case must come from a different section of the course (i.e., one case must come from the section on judicial power, another from legislative power, and a final one from executive power), and each paper is due the week following the completion of that section of the course.

The paper should outline what the oral argument was about and explain what the student found interesting and persuasive about the Justices’ questions and the lawyers’ arguments. Each paper is worth 5% of a student’s course grade. I will grade each paper on how well it is written, the extent of understanding it displays of the content of the case, and how much insight it provides into legal discourse and reasoning in general.

Grading of Midterm and Final:
We will discuss the structure, content, and grading of the midterm and final exam as we get closer to these dates in the semester. I can tell you now, though, that they will be in-class exams, consisting of several short-answer and essay questions relating to general themes covered in the course.

The following criteria will govern my grading of the exams.

Grade A:
The student makes well-structured arguments in his or her explanations and analyses of American Constitutional Law. The student writes comprehensive essays and exam questions, displaying that the student has not only read the material closely but also thought critically about the U.S. Constitution and its relationship to the American political and legal system.

Grade B:
The student shows a good understanding of the issues covered in the class, but has not fully engaged the nuances of American Constitutional Law.

Grade C:
The student has a basic grasp of some elements of American Constitutional Law, but has failed to demonstrate how the various pieces covered in the class fit together.

Grade D:
The student passes the class only because the student has identified some minimal points of relevance, but for the most part, the student has not demonstrated even a basic understanding of the most elemental features of American Constitutional Law.
Grade F:

The student fails because the student has not demonstrated an understanding of anything significantly relevant to the major themes covered in the course.

Extra Credit:

I do not provide extra credit work during the semester. Your grade will be based solely on your participation, short papers, and exams.

NYU Washington, DC uses the following scale of numerical equivalents to letter grades:

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<thead>
<tr>
<th>Numerical</th>
<th>Letter Grade</th>
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<tbody>
<tr>
<td>100-94</td>
<td>A</td>
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<tr>
<td>93-90</td>
<td>A-</td>
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<tr>
<td>89-87</td>
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<td>86-84</td>
<td>B</td>
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<td>83-80</td>
<td>B-</td>
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<td>79-77</td>
<td>C+</td>
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<td>76-74</td>
<td>C</td>
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<td>73-70</td>
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<td>69-67</td>
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<td>65-66</td>
<td>D</td>
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<td>below 65</td>
<td>F</td>
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Attendance Policy

Students are permitted one unexcused absence across the course of the semester. To seek an excused absence for medical reasons, students must email or discuss with Lauren in advance of their missed class. For an excused absence, students must produce a doctor’s note dated with the exact dates of the missed class and/ or exam. Non-medical absences must be discussed with Lauren prior to the date(s) in question. Lauren will communicate the absence to all relevant faculty. If you have not received notification from Lauren, the student has not procured an excused absence.

If students have more than one unexcused absence they will be penalized by deducting 50% of the class participation grade (e.g.: If the class participation grade is 20% of the final grade, the final participation grade would be reduced by 50%. 80%---> 40%)

If students have more than two unexcused absences they will fail the course. Students are responsible for making up any work missed due to absence. This means they should initiate email and/ or office hour discussions to discuss any missed lectures and assignments and arrange a timeline for submitting missed work.

NYU Washington, DC expects students to arrive to class promptly (both at the beginning and after any breaks) and to remain for the duration of the class. Three late arrivals or earlier departures (10 minutes after the starting time or before the ending time) will be considered one absence.

Please note that for classes involving a field trip or other external visit, transportation difficulties are never grounds for an excused absence. It is the student’s responsibility to arrive at the announced meeting point in a punctual and timely fashion. Staff members may always be reached by cell phone for advice regarding public transportation.
Late Submission of Work

1) Written work due in class must be submitted during the class time to the professor.

2) Late work should be emailed to the faculty as soon as it is completed. If the assignment must be submitted in person, Lauren Sinclair can collect on behalf of the faculty between the hours of 10-6, M-F.

3) Late work will be reduced for a fraction of a letter grade (e.g.: A to A-, A- to B+, etc.) for every day it is late, including weekends.

4) Written work during the semester that is submitted 5 days after the submission date (including weekends) without an agreed extension fails and is given a zero.

5) Students who arrive to class late for an exam do not have automatic approval to take extra time to complete the exam.

6) Students who miss an exam (including the final) without previously arranged permission will receive a zero on that exam.

7) Assignments due during finals week that are submitted more than 3 days without previously arranged extensions will not be accepted and will receive a zero. Any exceptions or extensions for work during finals week must be discussed with the Site Director.

Students with Disabilities

Accommodations are available for students with documented disabilities. Please contact the Moses Center for Students with Disabilities at 212-998-4980 or see their website (http://www.nyu.edu/life/safety-health-andwellness/students-with-disabilities.html) for further information.

Plagiarism Policy

The presentation of another person’s words, ideas, judgment, images or data as though they were your own, whether intentionally or unintentionally, constitutes an act of plagiarism.

NYU Washington, DC takes plagiarism very seriously; penalties follow and may exceed those set out by your home school. All your written work must be submitted as a hard copy AND in electronic form to the instructor. Your instructor may ask you to sign a declaration of authorship form.

It is also an offense to submit work for assignments from two different courses that is substantially the same (be it oral presentations or written work). If there is an overlap of the subject of your assignment with one that you produced for another course (either in the current or any previous semester), you MUST inform your professor.

For guidelines on academic honesty, clarification of the definition of plagiarism, examples of procedures and sanctions, and resources to support proper citation, please see: http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/academic-integrity-for-students-at-nyu.html
http://gls.nyu.edu/page/gls.academicintegrity
Required Text(s)  
  (assignments from this book will be referred to below as “casebook,” and the principal cases covered in each reading assignment will be placed in parentheticals following the casebook page numbers)  
- Remaining texts are available on Blackboard (these assignments will be marked with “B” following the assignment names)  

Supplemental Texts(s) (not required for purchase)  
N/A  

Internet Research Guidelines  
Supreme Court decisions are available on several websites, such as http://www.law.cornell.edu/supct/. In addition, case summaries can be found on many websites, the most helpful being www.oyez.org, where you can also listen to the oral arguments for almost all the post-1960 cases that we will be covering in this class. Wikipedia is generally reliable in summarizing Supreme Court decisions and constitutional doctrines but these summaries are often superficial and are at times inaccurate, so be careful about using it, or any similar websites, as the principal basis for your research.  

Session 1  
**Wednesday, February 6**  
**Class Theme:** Theoretical Foundations – What Is Law and What Is Constitutional Law?  
**Reading Assignment:**  
1) Lon Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949) (B)  
2) Constitution, Articles I-VII  
3) Casebook pp. 1-29 (The Federalist, No. 10; The Federalist, No. 51)  

Session 2  
**Wednesday, February 13**  
**Class Theme:** The Construction of the American Constitution and the Doctrinal Foundations of Judicial Review  
**Reading Assignments:**  
1) Constitution, Article III  
2) Casebook pp. 29-60 (*Marbury v. Madison*; *Martin v. Hunter’s Lessee*)  

Session 3  
**Wednesday, February 20**  
**Class Theme:** The Sources of Judicial Decisions and Political Control Over the Supreme Court  
**Reading Assignments:**  
1) Constitution, Article I, section 8; Article III  
2) Casebook pp. 61-89 (*McCulloch v. Maryland*; *Ex parte McCardle*)  
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<tr>
<th>Session 4</th>
<th><strong>Class Theme:</strong> Judicial Authority – The “Case or Controversy” Requirement</th>
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<tr>
<td>Wednesday, February 27</td>
<td><strong>Reading Assignments:</strong></td>
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<tr>
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<td>1) Constitution, Article III</td>
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<td>2) Casebook pp. 89-119 (<em>Allen v. Wright; Lujan v. Defenders of Wildlife</em>)</td>
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<tr>
<th>Session 5</th>
<th><strong>Class Theme:</strong> Judicial Authority – Political Questions and Recusal</th>
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<tr>
<td>Wednesday, March 6</td>
<td><strong>Reading Assignment:</strong></td>
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<tr>
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<td>1) Constitution, Article IV, section 4</td>
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<td>4) Eric Segall, <em>A Liberal’s Lament on Kagan and Health Care: Should Kagan Recuse Herself in the ACA Case?</em> Slate (B)</td>
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<tr>
<th>Session 6</th>
<th><strong>Class Theme:</strong> Congressional Authority – Regulation of Interstate Commerce</th>
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<tbody>
<tr>
<td>Paper # 1 Due</td>
<td><strong>Reading Assignment:</strong></td>
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<tr>
<td>Wednesday, March 13</td>
<td>1) Constitution, Art. I, section 8</td>
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<td>3) <em>Gonzales v. Raich</em>, 545 U.S. 1 (2005) (B)</td>
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<th>Session 7</th>
<th><strong>Class Theme:</strong> Congressional Authority – Taxing, Spending, and the War Power</th>
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<tr>
<td>Wednesday, March 27</td>
<td><strong>Reading Assignment:</strong></td>
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<td>1) Constitution, Art. I, sec. 8</td>
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<tr>
<th>Session 8</th>
<th><strong>MIDTERM</strong></th>
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<td>Wednesday, April 3</td>
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<th>Session 9</th>
<th><strong>Class Theme:</strong> Congressional Authority – the 14th Amendment, the 10th Amendment, and State Autonomy</th>
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<td>Wednesday, April 10</td>
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**Reading Assignment:**
1) Constitution, Amend. X
2) Constitution, Amend. XIV

**Session 10**

**Class Theme:** Executive Authority – the Take Care Clause

**Paper # 2 Due**
Wednesday, April 17

**Reading Assignment:**
1) Casebook pp. 357-375 (Youngstown Sheet & Tube Co. v. Sawyer; Dames & Moore v. Regan)
2) Letter from Thomas Jefferson to Abigail Smith Adams, June 13, 1804 (B)
3) The Bybee Memo (B)
4) Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act (B)
5) Neil Buchanan & Michael Dorf, How to Choose the Least Constitutional Options (B)

**Session 11**

**Class Theme:** Executive Authority – Presentment, Appointments, and Formal Separation of Powers

**Wednesday, April 24**

**Reading Assignment:**
1) Casebook pp. 417-445 (INS v. Chadha; Bowsher v. Synar; Morrison v. Olson)
2) Clarence Thomas Confirmation Hearings (1991) (B)

**Session 12**

**Class Theme:** Executive Authority – Impeachment, Privilege, and Immunity

**Wednesday, May 1**

**Reading Assignment:**
1) Casebook pp. 405-417 (U.S. v. Nixon)
2) Articles of Impeachment against President Richard M. Nixon (1972) (B)
3) Articles of Impeachment against President William Jefferson Clinton (1998) (B)
4) Articles of Impeachment Against President George W. Bush, (2008) (B)
5) David Swanson, 27 of 35 Bush Articles of Impeachment Apply to Obama, Washington Post (2012) (B)

**Session 13**

**Class Theme:** Executive Authority – Foreign Affairs and the Commander in Chief

**Wednesday,**
May 8

**Reading Assignment:**
3) Authorization to Use Military Force Act (2001) (B)

**Session 14**

**Class Theme:** The Constitution and the 21st Century – Globalization and the Transnational Constitution

**Reading Assignment:**

**FINAL EXAM Wednesday, May 22**

While I would prefer that all computers be turned off during non-exam classes, I will not make this preference a rule. I have horrible handwriting and understand the need to type notes. But please avoid engaging in activities such as Gchatting, Facebooking, AOL chatting (showing my age with this one), emailing, texting, tweeting, Mets score checking (showing my team affinity with this one), Match scopeing, and all other such computer or phone activities that we all know we should not be doing in the presence of others. Your class experience will be much better, I guarantee, if you are not surrounded by a room full of people Gchatting.

The above is preferred for non-exam classes, but it is an absolute rule that during exams all computers must be turned off. Violating this rule will be treated as a violation of academic integrity. See the above for how such violations will be treated.

Cell phones must always be turned off or put away, whether during an exam or non-exam class. I also have a horrible habit of checking my phone, so I understand the difficulty of putting it away for an entire class period, but checking it during class is disturbing to others. Please do your best to turn your cell phone off and leave it alone. Checking your phone during an exam will also be treated as a violation of academic integrity.

If time and schedules permit, we will visit the Supreme Court and hear an oral argument. In the event that we cannot make this trip as a class, however, I strongly encourage all students individually to attend an argument at some point during the semester. Hearing an oral argument in person is not only a really fun experience, but it also will help shed light on the Supreme Court as an institution and the types of legal arguments that we will be studying in this course.

**Suggested Co-curricular Activities**

If time and schedules permit, we will visit the Supreme Court and hear an oral argument. In the event that we cannot make this trip as a class, however, I strongly encourage all students individually to attend an argument at some point during the semester. Hearing an oral argument in person is not only a really fun experience, but it also will help shed light on the Supreme Court as an institution and the types of legal arguments that we will be studying in this course.

**Your Instructor**
I am a fifth-year Ph.D. student in the Political Science Department at Johns Hopkins University, in the process of completing my dissertation on legal consistency and the rule of law. I have published extensively in law-review and peer-reviewed journals, covering various areas of constitutional law and theory. In 2012, I completed my M.A. in both the Hopkins’ Philosophy and Political Science Departments. Before coming to Hopkins, I received my J.D. from GW Law and my B.A. from Wesleyan University. I have worked as a litigator at the Center for Constitutional Litigation, as a Pew Forum researcher in religion and law, and before law school, as a Kaplan LSAT tutor. I welcome discussions with students about various career paths and decisions, including law school applications and admissions, the practice of law, and academia. I am also an avid baseball fan, and welcome discussions about anything related to rooting for the Mets (and against the Yankees).