Course details

POL-UA9330001/HIST-UA9330001 American Constitution
Spring 2016
CLASS MEETING TIME: Mondays, 6:15 – 9:15 PM *

* There will be a Friday legislative make-up day.

Instructor Contact Information

Prerequisites

N/A

Course Description

“It is not important whether or not the interpretation is correct – if men define situations as real, they are real in their consequences.” William I. Thomas

“Just what our forefathers did envision or would have envisioned had they foreseen modern conditions, must be divined from materials almost as enigmatic as the dreams Joseph was called upon to interpret for Pharaoh.” Justice Robert Jackson, U.S. Supreme Court

This course provides a general theoretical survey of the American Constitution, excepting its guarantee of individual rights, such as those enumerated in the Bill of Rights. The U.S. Constitution has endured for over two centuries as a touchstone for defining the U.S. as a sociocultural, economic, and political unit. As a textual and ideational construct, the Constitution continues to profoundly impact the fabric of American identity, political culture, and the socioeconomic actuality of those that reside under the (aegis of the) Constitution.

The relative brevity of the Constitutional text conceals an intricate architecture for the “proper” or “correct” definition of government and governance. The U.S. Constitution – as text, as political, social, and economic ordering mechanism, as expression of an historical moment, as a repository of culture and ideology, as a philosophy of government and governance – is considerably complex. The Constitution, in its original as well as amended form, is, among other things, a legal document which sets out the structure of the federal government, defines the legal authority of the federal government (and, to a lesser extent, State governments), and puts forth sundry constraints on the exercise of the federal government’s power. The Constitution lays out the legal relationship between the federal government, State governments, and all persons subject to their respective jurisdictions.
Since the Constitution’s inception, various political actors have put forth competing interpretations of the “true” or actual meaning and purpose of the Constitution. The Constitution – as well as the variegated components informing the document’s interpretation, e.g., historical documents – has been the site of intense contestation. It has provided the fulcrum, a context, for conflict surrounding the “correct” interpretation of the Constitution. The Executive, Legislative, and Judicial branches of the federal government, as well as State governments, have vied for the power of being the “true” expounder of Constitutional truth. The federal courts, in particular the U.S. Supreme Court, have produced a distinct constitutional discourse that proffers the “correct” interpretation of the Constitution.

The Constitution is thus central to American government, from the mechanics of government and governance to political identity, thought, and culture. Every aspect of a citizen-subject’s being – e.g., rights, freedoms, responsibilities, duties, and obligations – is directly affected by interpretation of the Constitution’s provisions. Myriad interpretations of the Constitution have surfaced over the past two centuries, spawning distinct theoretical, political, and ideological perspectives concerning the meaning and purpose of the Constitution in ordering the American polity.

In light of the profound impact that the American Constitution has and continues to have on defining the potential and actuality of political, social, and economic reality for its citizen-subjects, this course will provide students with an introduction to select theoretical perspectives that seek to explain and understand the American Constitution. The course provides a select survey of approaches to interpretation (and the various issues that arise in the course of interpretation) when seeking to determine the meaning of the Constitution. The course employs materials from the humanities, social sciences, and law to explore the Constitutional interpretative enterprise.

**Desired Outcomes**

The aim of this course is for students to:

1. Be conversant with, and have an appreciation for, select approaches to/theories of Constitutional interpretation.

2. Develop a critical perspective of Constitutional interpretation.

3. Identify and apply formal perspectives that seek to explain and understand the Constitution’s meaning.

4. Critically analyze and evaluate select approaches to/theories of Constitutional interpretation.

*Assessment Components*
**Presentation:** (See Additional Information below) 20% of final grade

**Weekly Journal:** (See Additional Information below) 50% of final grade

**Final Exam:** (See Additional Information below) 30% of final grade

- Note: Failure to timely submit or fulfill any required course component may result in failure of the class

### Assessment Expectations

**Grade A:** Student demonstrates excellent comprehension of subject matter and materials. Student engages materials and offers insightful commentary in assignments. Assignments show strong evidence of critical thought. Student effectively incorporates readings, class discussion, and original thought into assignments. Student actively and substantively participates in class discussion.

**Grade B:** Student demonstrates significant comprehension of subject matter and materials. Student engages materials. Student effectively incorporates readings and class discussion into assignments. Student actively participates in class discussion, and demonstrates a degree of critical thought in assignments and discussion.

**Grade C:** Student demonstrates a basic understanding of subject matter and materials. Assignments address basic aspects of the subject matter. Student sufficiently incorporates materials into assignments. Student participates in class discussion, and attempts to incorporate critical thought in assignments and discussion.

**Grade D:** Student has limited understanding of the subject matter and materials. Assignments do not incorporate assigned materials effectively. Limited critical thought or engagement with materials. Very limited class participation.

**Grade F:** Student has very limited understanding of subject matter and materials. Assignments do not incorporate assigned materials. Very limited critical thought or engagement with materials. No class participation.

### Grade conversion policy of NYU–Washington DC

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

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<thead>
<tr>
<th>Numerical Grade</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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<td>89–87</td>
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<td>86–84</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 of NYU–Washington DC
Study abroad at Global Academic Centers is an academically intensive and immersive experience, in which students from a wide range of backgrounds exchange ideas in discussion-based seminars. Learning in such an environment depends on the active participation of all students. And since classes typically meet once or twice a week, even a single absence can cause a student to miss a significant portion of a course. **To ensure the integrity of this academic experience, class attendance at the centers is mandatory, and unexcused absences will affect students’ semester grades.** Students are responsible for making up any work missed due to absence. Repeated absences in a course may result in failure. At all Global Academic Centers, unexcused absences will be penalized with a two percent deduction from the student’s final course grade.

To seek an excused absence for medical reasons, students must email or discuss with the Academic Program Coordinator in advance of their missed class (if not an emergency). For an excused absence, students must produce a doctor’s note (dated and signed by medical professional) with the exact dates of the missed class and/or exam clearly indicated. Please discuss medically excused absences with the Academic Program Coordinator.

Non-medical absences must be discussed with the Academic Program Coordinator prior to the date(s) in question, who will communicate the absence to all relevant faculty members. If faculty members do not receive notification, the student has not procured an excused absence.

NYU Washington, DC expects students to arrive to class promptly (both at the beginning and after any breaks), to be attentive, and to remain for the duration of the class. If full class attendance and participation becomes a problem, it is the prerogative of each instructor to apply the rule for unexcused absences, which may include, but is not limited to, a two percent deduction from the student’s final course grade.

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.

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 Policy of NYU--Washington DC

1) Written work due in class must be submitted in a timely manner during the assigned 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, the Academic Program Coordinator can collect on behalf of the faculty between the hours of 9–5, 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 Policy of NYU–Washington DC**

Accommodations are available for students with documented disabilities. Please contact the Moses Center for Students with Disabilities at +1-212-998-4980 or see their website (http://www.nyu.edu/life/safety-health-andwellness/students-with-disabilities.html) for further information.

**Plagiarism Policy of NYU–Washington DC**

As the University's policy on “Academic Integrity for Students at NYU” states: “At NYU, a commitment to excellence, fairness, honesty, and respect within and outside the classroom is essential to maintaining the integrity of our community. By accepting membership in this community, students take responsibility for demonstrating these values in their own conduct and for recognizing and supporting these values in others.” **Students at Global Academic Centers must follow the University and school policies.**

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

http://cas.nyu.edu/page/academicintegrity


**Religious Observance Policy of NYU–Washington DC**
Students observing a religious holiday during regularly scheduled class time are entitled to miss class without any penalty to their grade. This is for the holiday only and does not include the days of travel that may come before and/or after the holiday.

Students must notify their professor and the Office of Academic Support in writing via email at least one week in advance before being absent for this purpose.

### Required Text(s)

**You are not required to purchase a textbook(s):** All materials will be posted to NYU Classes. The readings are drawn from select academic journals (humanities, social sciences, and law) and Constitutional law.

### Supplemental Text(s) (not required for purchase)

N/A

### Internet Research

**ANY** material obtained from the Internet **MUST** be properly cited with acceptable academic format (e.g., MLA).

### Additional Required Equipment

N/A

### Additional Information

1. The Instructor reserves the right to alter the syllabus as needed. Students will be given reasonable notice of any changes.

2. **THIS IS A READING-INTENSIVE COURSE.** The rigorous volume of readings is necessary to provide the student with basic materials to adequately and critically analyze complex conceptual approaches/frameworks that seek to ascertain and interpret the Constitution.

3. Please follow all classroom etiquette/policies (Stated below)

4. Guidelines for all written assignments:

   **Presentation:**

   a. **Format** – 20–25 minute formal presentation on an assigned topic/reading(s). Students will pick a topic/reading and class period to present. Allocation of dates and topics/readings will be determined during the first class session. Power Point or other formal presentation format is acceptable and recommended but not required; use of the whiteboard is acceptable. If Power Point, etc., is utilized, email the presentation to the instructor before class. If Power Point is not utilized, then 1., a hardcopy of formal presentation points for the instructor and class is **required**, and 2., email a copy to instructor. **Loss of points will occur when:** 1., Unclear/incoherent presentation – **up to 10 points**. 2., Insufficient critical thought/reflection, insufficient
engagement with materials – up to 10 points. Presentation constitutes 20% of final grade.

b. Substance – Very brief summary of reading. Bulk of presentation should be spent on your analysis of the topic/reading – in particular, a critique/analysis of the proffered thesis/argument vis-à-vis interpretation of the Constitution should be addressed. Presentation should not paraphrase, regurgitate, etc., material; rather, the presentation should highlight your select critical analysis of some major aspect of the reading’s thesis/hypothesis and/or methodology in light of interpreting the Constitution. Presentation should be focused, clear, and engage the assigned topic/reading. I will provide individual feedback after presentation.

Journal:

a. Format – Title page, one-inch margins, 1.5 or double-spaced, 12-font Times New Roman, consecutively numbered pages. Proper grammar, citation, style, etc., is expected and required. Clear, coherent prose is expected when writing entries. MLA format or other major academic format acceptable for citation. Journal entries should be 2–4 pages. Journal constitutes of 50% of final grade. Each entry is worth 4 points (12 entries multiplied by 50 points each entry = 48 points total (2 point round up in your favor when all entries are submitted on time). Loss of points per entry will occur when: 1., Improper formatting, unclear/incoherent grammar/prose, lack of citations – up to 2 points. 2., Insufficient critical thought/reflection, insufficient engagement with materials – up to 2 points.

b. Substance – The overall purpose of the journal is to record the development of your perspective(s) on interpretation and Constitutional meaning. The journal assignment is designed to stimulate critical thought and analysis, and to document continuity and change in your thought, pertaining to the Constitution and the interpretive enterprise. Each entry should engage the materials; critical reflection and analysis on theories, concepts, principles, issue-areas etc., covered in materials and class discussion is the focus of each journal entry. Your view, opinion, of the readings (supported by the materials) is expected. I will provide a weekly question prompt(s) for each entry on NYU classes/email, but you are encouraged to posit and explore your own question(s) as long as such inquires directly relate to and can be located in the readings/class discussion. If unsure, check with me before submitting the entry. For example, question prompts that I may assign (or that you may come up with on your own) are: 1., What view of the Constitution is being advanced as “correct” by a respective author(s)? Do you find this view(s) persuasive? Why or why not? 2., How does a respective author support, undermine, and/or confuse your vision of the Constitution? 3., What are the ideological, moral, and/or economic arguments being advanced by a respective author? Do you find such arguments persuasive? Why or why not? 4., Compare and contrast the xxx approach and xxx approach to Constitutional interpretation: Which do you find more sound/valid, and why?

In sum, actively and substantively engage the materials. Formulate an informed opinion. Deconstruct that opinion. Evaluate your and others’ opinions, views, etc., in light of class materials and discussion. You will find yourself engaged in an evolving thought process; questions about interpretation and the Constitution, which theories, principles, etc., are convincing, confusing, or inapplicable will arise throughout the course and should be reflected in the journal. I will provide individual feedback for each entry.

c. Due date/timeline – One journal entry per week to be turned in via email as well as in hardcopy format before the beginning of each class beginning Session 2 and last entry due Session 13 (NO exceptions, unless approved medical excuse provided). All entries will be handed in as a comprehensive final journal on the last class. Complete each entry prior to each class. Add any additional thoughts, comments, etc., after the class to your initial entry after returned to you for a final comprehensive journal to be handed in on the last class via email. The final comprehensive journal, with substantive edits in the form of after-class addenda, may qualify for up to 4 additional points (beyond the 50-point value of the
journal assignment). This possibility is based on the relevance/substance of addenda, and subject to the same criteria enumerated above (in section a.). *Note: Failure to submit the final comprehensive journal on time will result in denial of possible extra points and loss of 2 point round up.

**Final Exam:** Comprehensive essay exam. 3 questions pertaining to: 1., Sources of, 2., Approaches to, and 3., Theories of Constitutional Interpretation. Each question is worth 10 points. Exam constitutes 30% of final grade. Each question requires that you demonstrate comprehensive understanding. **Loss of points per question will occur when:** specific parts of questions are not properly addressed – **up to 10 points.**

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**Session 1 – MONDAY, FEB. 1**

**I. ANALYZING THE AMERICAN CONSTITUTION**

**A. Overview and Introduction – Theories of Constitutional Interpretation**


2. The Federalist Papers, *Federalist # 10, Federalist # 51*, and *Federalist #78*, available online http://avalon.law.yale.edu/subject_menus/fed.asp

3. *U.S. Constitution, Article III* (“see explanation” links if you require clarification on Article III), available online https://www.law.cornell.edu/constitution


* Note: hereinafter, the designation “ACS PDF” indicates materials from *It Is A Constitution We Are Expounding: Collected Writings On Interpreting Our Founding Document*, L.H. Tribe, American Constitution Society for Law & Policy (2009)

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**Session 2 – MONDAY, FEB. 8** *Note: Class does not meet next week (February 15) due to Presidents Day holiday.*

**II. SOURCES OF CONSTITUTIONAL MEANING**

**A. Structure & Text:**


   


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**Session 3 – MONDAY, FEB. 22**

**B. History**


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**Session 4 – MONDAY, FEB. 29**

**C. Precedent & Doctrine**


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**Session 5 – MONDAY, MARCH 7** *Note: Class does not meet next week due to Spring Break*
D. Non-Interpretive Considerations


3. Lawrence Baum and Neal Devins, "Why the Supreme Court Cares About Elites, Not the American People" (2010). College of William & Mary Law School, Faculty Publications (PDF pp. 1516 – 1529, 1537 – 1545)

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**Session 6 – MONDAY, MARCH 21**

E. Philosophy/Moral Reasoning


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**Session 7 – MONDAY, MARCH 28**

III. SELECT APPROACHES TO ASCERTAINING THE MEANING OF THE AMERICAN CONSTITUTION

A. The Natural Law Paradigm (1789-1872)


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**Session 8 – MONDAY, APRIL 4**

B. The Formalist Paradigm (1872-1937)

C. *The Holmesian Paradigm (1937-1954)*


Session 9 – MONDAY, APRIL 11

D. *The Instrumentalist Paradigm (1954-1986)*


3. Franklin D. Roosevelt, *Fireside Chat* (March 9, 1937), and *Address on Constitution Day*, (Washington DC, Sept. 17, 1937) (CB PDF, pp. 626 – 634)

Session 10 – MONDAY, APRIL 18

E. *The “Postmodern” Paradigm (1986–present?)*


3. Roland Barthes, *Death of the Author* (PDF)

Session 11 – MONDAY, APRIL 25

IV. INTERPRETING THE AMERICAN CONSTITUTION
A. Exemplars of Meta-Theoretical Frameworks

1. Textual

Session 12 – MONDAY, MAY 2 * Note: Class meets THIS FRIDAY for a make-up day.

2. Originalist
   b. *Note on Language, Purpose, and Meaning*, (CB PDF, pp. 201 – 208)

3. Doctrinal (Historical)
   a. Hugh E. Willis, *The Doctrine of the Supremacy of the Supreme Court*, 6 Ind. L.J. 224 (1930-1931) (Abridged PDF)

Session 13 – FRIDAY, MAY 6 *Note: Make-up Day

4. Developmental

5. Balancing

Session 14 – MONDAY, MAY 9

V. CONCLUSION: CONSTITUTIONAL ADJUDICATION (IN A POST POST-MODERN WORLD?)
Concluding thoughts, questions, commentary, revised comprehensive journal (emailed) due, & brief review

MONDAY, MAY 16

FINAL EXAM

Classroom Etiquette

1. Please arrive on time; lateness is extremely disruptive. If you must be late, please enter in an unobtrusive and quiet manner. Once the class has started, students are expected to stay until the end of the class period. Lastly, please be attentive and respectful for the duration of the class period; refrain from talking or making other noise while in class. Failure to arrive promptly and remain for the duration of the class will result in student being marked absent.

2. Electronic Devices. Personal computers (for the purpose of note-taking) should be the only electronic devices utilized while attending class. Please refrain from engaging in online social media of any kind (e.g., Twitter, Facebook, and the like) while using computers in class. While I can understand the allure of passing time in class via social media, doing so will negatively impact your experience/final grade. If you are caught using social media for part or all of class time, then you are, in essence, not in class and will be marked absent. I will do everything I can to develop and stimulate your interest in the subject matter, but an effort to seriously and substantively engage must take place from you (the student) as well.

While in class please turn off/silence ALL electronic devices, including but not limited to cell-phones. The sundry noises emitted from various electronic devices are disruptive. Please do not use a cell phone in class. If you are expecting or must take a call, excuse yourself quietly from the classroom; please do not answer your phone while in the classroom. Please do not use a cell phone while in class for any purpose. Interruptions of this nature will negatively impact your experience/grade in the class. I reserve the right to ask you to leave the classroom and mark you absent if you violate this policy. Problem behavior will be reported to the Academic Director/Coordinator.

3. I expect, while in the classroom (and, if applicable, outside of the classroom), that you comport yourself properly. Respect and civility between students, and students and the instructor, is basic and expected at all times.

Possible Co-curricular Activities

Tentatively, a guest presenter is scheduled to speak at the Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington DC, 20002. The FJC is located next to Union Station, easily accessible via Metro. Students will be given advance notice of date/time of the presentation.

Suggested Co-curricular Activities

If you have time, I suggest attending a federal court proceeding and/or oral argument.
http://www.supremecourt.gov/faq_visiting.aspx


http://www.dcd.uscourts.gov/dcd/