

NYU DC

POL-UA9330 DC1 / HIST-UA9330 DC1

American Constitution

Spring 2019

Instructor Information

- Dr. Marvin Astrada
- Office hours by appointment
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Course Information

AMERICAN CONSTITUTION

Mondays, 6:15 – 9:15 PM, Room __

(Note: There will be a legislative make-up day).

“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

Welcome to the seminar on the American Constitution. This course provides a general yet intensive legal and theoretical survey of the American Constitution.

The U.S. Constitution, as textual artifact, has endured for over two centuries as a touchstone for defining (in large part) the U.S. as a sociocultural, economic, and political unit. As a textual and ideational construct, the U.S. Constitution continues to profoundly impact the fabric of American identity, political culture, and the socioeconomic and political actuality of those that reside under its aegis and jurisdiction.

The relative brevity of the Constitutional text conceals an intricate political and legal architecture for a “proper” or “correct” definition, interpolation, of government and governance. The U.S. Constitution – as text, as political, social, and economic ordering mechanism, as an 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 said government (and, to a lesser extent, State governments), and puts forth sundry constraints on the exercise of government power. The Constitution lays out the legal relationship between the federal government, State governments, and all persons subject to their respective jurisdictions. Additionally, and more controversially, the plasticity of text and the penumbras within which interpretation of texts takes place gives rise to a multitude of issues, problems, and challenges that beset the interpretive enterprise of “finding” (manufacturing?) Constitutional “truth(s).”

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 and political philosophy – has been a 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 each claimed the right to legitimately be the “true” expounder of Constitutional truth at some point in the Constitution’s history. 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 and cases that seek to explain and understand the American Constitution. The course thus 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 primarily from constitutional law to explore the Constitutional interpretative enterprise.

- Note: Although there are no formal prerequisites, it is strongly recommended that students have taken introductory/advanced classes in American government and history, judicial politics, law, political theory and philosophy, and political science.

Course Overview and Goals

The general aim of this course is for students to become conversant with, critical of, and have an appreciation for select theories of and approaches to Constitutional interpretation.

Upon Completion of this Course, students will be able to:

- Develop a sophisticated analytical perspective of Constitutional interpretation.
- Identify and apply theoretical concepts/perspectives that seek to explain and understand the Constitution's meaning.
- Critically analyze and evaluate select approaches to Constitutional interpretation through leading a class discussion, active participation, and written assignments.
- Facilitate thoughtful and respectful debate, question and deconstruct preexisting ideas and beliefs about what the Constitution means or should mean, and why.

Course Requirements

Class Participation

Active and substantive class participation, in the form of leading a class discussion as well as ongoing participation, is expected and required throughout the semester. [15% of Final Grade](#)

Assignment 1

Test – Mid-Term Exam. [40% of Final Grade](#)

Assignment 2

Test – Final Exam. [45% of Final Grade](#)

Description, Guidelines & Suggestions for Course Requirements & Grading

1. The Instructor reserves the right to alter the syllabus as needed.

2. THIS IS A READING-INTENSIVE SEMINAR: The assigned reading load for this seminar may be heavy volume-wise. The readings are necessary in order to provide sufficient material to effectively engage the subject matter. Please note that the readings reflect the fact that each session is comprised of two (2) classes. Also, and more importantly, the required readings are dense, complex in nature. It is assumed that the student has, at the very least, knowledge of American government, politics, and the judiciary. If you are unfamiliar with reading Court opinions, you most likely will find the readings to be quite challenging. I would suggest that you begin looking through the materials before the first session.

3. **THIS IS AN INTERACTIVE SEMINAR:** You are expected to actively and substantively participate in all class discussions, activities, debates, and presentations. Each student will be responsible for formally introducing and leading a class discussion.

4. **PARTICIPATION:** The purpose of participation, very broadly construed (to include debate and discussion as well as being on call), is to develop and hone analytical, reasoning, presentation, and argumentation skills based on reason, logic, and evidence. It is also geared toward developing the crucial ability to listen carefully and respond to the arguments of others which you may not agree with. *To encourage the development of these skills, every student is subject to being on call each class and will be expected to have read the assignments and to participate on the basis of the readings.* On call includes being able to state case facts, holdings, and your views on Court reasoning, logic, and judicial politics and power. Also, in the context of leading class discussion and class debates, students will be asked to respond to the claims and arguments made in the readings and by fellow students. *Being unprepared more than three times during the course of the semester will result in the loss of 10 points off the final grade.*

When leading a class discussion, Do NOT regurgitate readings. You should introduce and explore critique/analysis of the proffered thesis/argument, philosophy, methodology, etc., employed. Discussion should not paraphrase material; rather, it should highlight critical analysis of some major aspect(s) of the reading's thesis/hypothesis, implications, and/or methodology, effectively engaging the assigned topic/reading. Most importantly, it should engage the audience; i.e., you are not simply presenting information to a passive audience. Active class participation is to be facilitated, e.g., through group activities, posing, answering, and debating questions, etc.

5. **EXAMS:** In class mid-term and final exams. 2.5 hours. Combination of short/long essay questions based on the readings – case holdings/significance in particular. The Mid-term covers material up to the exam date, and the Final covers material from the mid-term to the end of class.

6. **NOTE:** The bulk of this seminar is theoretical; the seminar is devoted to students becoming proficient and conversant with legal theory and conceptual analysis.

7. **DISCUSSION AND EXAM PREP:** Actively engage the readings (rather than passive reading). Maintain a critical awareness about what you are reading, e.g., justifications for interpretations, methods, philosophical and political underpinnings of reasoning and holdings, ideological perspectives, etc. It is highly recommended that you maintain an ongoing class summary/outline of notes major points/themes/concepts in readings, and to brief all cases. Briefing, employed in law school, is a way of succinctly summarizing cases. An example is provided as to how to brief a case. You may use any format you wish. Your text book provides access to online content that features a briefing and note taking tool if you wish to use it. We will not be concerned with technicalities, so adapt briefing to your needs, which is to have a brief summary of case facts, issue, holding and any interesting aspects of a case you wish to note. I have provided three template examples to use or adapt in the NYU Classes Resources. Bring your working notes and briefs to every class so that you can edit as we go along. This will provide you with a valuable exam prep tool as well as a basis for active and substantive participation.

Assigned Readings

- Primary Text – Paul Brest et. al, *Processes of Constitutional Decision-Making: Cases & Materials* 7th ed. (Wolters Kluwer, New York 2018). ISBN-13: 978-1-4548-8749-2 (Bring text to each class).

Grading of Assignments

The grade for this course will be determined according to the following formula:

Assignments/Activities	% of Final Grade
Class participation	15%
Mid-Term Exam	40%
Final Exam	45%

Letter Grades

Letter grades for the entire course will be assigned as follows:

Letter Grade	Points	Percent
A	4.00	94-100
A-	3.67	90-93
B+	3.33	87-89
B	3.00	84-86
B-	2.67	80-83
C+	2.33	77-79
C	2.00	74-76

Letter Grade	Points	Percent
C-	1.67	70-73
D+	1.33	67-69
D	1.00	65-66
F	.00	Below 65

View Grades

Grades will be available on the NYU Classes site.

Course Schedule

Topics and Assignments

Week/Date	Topic	Reading	Assignment Due
Session 1 4- Feb-19	I. Overview: Contextualizing the Constitutional Order & Interpretive Enterprise	<p>1. Federalist Papers: #s 2, 10, 37, 51, and 78 available online at The Avalon Project Documents in Law, History, and Diplomacy.</p> <p>2. Casebook: <i>US Constitution Text & Background:</i> pp. 1 – 25 (pay particular attention to Articles I, II & III)</p> <p>3. Thomas J. Norton, The Constitution of the US: Its Sources & Application: carefully</p>	<p>Before we begin the semester, consider beginning your notes/outline with the following: What is your view, what do you believe (or have been socialized to believe) about the character and content of the Constitution and the Supreme Court – what does each embody, and why?</p> <p>Suggestion: It is <i>highly</i> recommended that you maintain a working summary/outline of major points/themes/ concepts in readings, and to brief all cases.</p>

Week/Date	Topic	Reading	Assignment Due
		read the annotations corresponding to: Article I [8] §§ 1, 18, Article III [1] and [2], and Article VI [2]	
Session 2 11- Feb-19	II. Continuity & Change – The Enduring Problem of Locating & Limiting Power in the Constitutional Order	<p>1. Thomas Hobbes, <i>Leviathan</i>: Chapter XIII (1651) (skim)</p> <p>2. Casebook: <i>McCulloch v. Maryland</i> and materials: pp. 27 – 71</p>	Carefully read Marshall's Methods of Interpretation (pp. 55-62), as these are considered the primary modalities of Con interpretation. Consider the problems that attach to each in light of the cases we will read throughout the semester.
18- Feb-19	President's Day - No Class		
Session 3 25-Feb-19	III. The Problem of the Court's Place & Role in the Interpretive Enterprise	<p>1. Casebook: <i>Chisholm v. Georgia</i>, <i>Stuart v. Laird</i> and <i>Marbury v. Madison</i> and materials: pp. 86 – 91, 108 – 138, 144 – 154</p>	Consider the problem of an unelected, elite, life-tenured Court making policy for 300 million + people in a democratic society.
Session 4 4-Mar-19	IV. Sources of Constitutional Knowledge & "Truth" – HISTORY	<p>1. Casebook: <i>Dred Scott v. Sanford</i> and materials: pp. 263 – 293</p>	Do you find Douglas' argument (pp. 288 – 293) about the Con being pro or anti-slavery convincing?
Session 5 11-Mar-19	Sources of Constitutional Knowledge & "Truth" – PRECEDENT	<p>1. Casebook: <i>Roe v. Wade</i> and <i>Planned Parenthood v. Casey</i> and materials: pp. 1414 –1431, 1447 – 1482</p>	Pay close attention the emphasis and discussion on precedent – do you find the Court's drawn out discussion and emphasis on precedent indicative of a disconnect from, problematic in light of, Roe?

Week/Date	Topic	Reading	Assignment Due
18-Mar-19	Spring Break - No Class		
Session 6 25-Mar-19	Sources of Constitutional Knowledge & “Truth” – <u>FEDERALISM</u>	1. Casebook: <u>US v. Lopez</u> , <u>Nat’l Fed of Independ Business v. Sebelius</u> , and <u>US v. Comstock</u> and materials: pp. 659 – 702	What do you think should be the power calculus between federal and state power? Why? What qualifies the Court to make this determination exactly?
Session 7 1-Apr-19			MID-TERM EXAM 1
Session 8 8-Apr-19	V. Interpreting the Constitution – Select Problems & Challenges: Executive Power, Security, Emergency & the Constitution	1. Casebook: <u>Youngstown Sheet & Tube Co. v. Sawyer</u> and materials: pp. 936 – 966	What does the Court’s opinion suggest about the nature of Constitutional order, viz., does Court privilege checks and balances and separation of powers over competing norms/values?
Session 9 15-Apr-19	Executive Power, Security, Emergency & the Constitution (continued)	1. Casebook: <u>Hamdi v. Rumsfeld</u> , <u>Boumediene v. Bush</u> , <u>Korematsu v. US</u> , and materials: pp. 966 – 998, 1054–1060	
Session 10 22-Apr-19	Contextualizing the General Welfare	1. Casebook: <u>Article I, §8 [1-18]</u> , <u>Harper v. VA Board of Elections</u> , <u>Dandridge v. Williams</u> , <u>DeShany v. Winnebago County Dept. of Social Services</u> , and <u>Castle Rock v. Gonzalez</u> and materials:	Consider: does general welfare as presented in the readings line up with what you thought or think it should be? Why doesn’t/shouldn’t housing, education, healthcare, employment qualify? Should they? Why or why not? What does the Court’s interpretation suggest as far as what it

Week/Date	Topic	Reading	Assignment Due
		pp. 3 – 5, 1649 – 1668, 1694 – 1705 2. J. Norton, <i>The Constitution</i> : pp. 45 – 46	prioritizes as constituting the general welfare?
Session 11 29-Apr-19	Contextualizing the General Welfare: Race, Ethnicity & the Constitution	1. Casebook: <i>Language & Purpose</i> etc. materials, <i>Race & Criminal Justice System</i> , <i>Downs v. Bidwell</i> , and <i>Chae Chan Ping v. US</i> and materials: pp. 201 – 216, 1112 – 1128, 431 – 452	
Session 12 6-May-19	Contextualizing the General Welfare: Rights, Sexuality & Orientation	1. Casebook: <i>Bowers v. Hardwick</i> , <i>Romer v. Evans</i> , <i>Lawrence v. TX</i> and materials: pp. 1511 – 1559	
Session 13 10-May-19 (Designated make-up day for Monday classes)	Contextualizing the General Welfare: Rights & Education	1. Casebook: <i>San Antonio Independ School District v. Rodriguez</i> , <i>Plyler v. Doe</i> and materials pp. 1668 – 1694	
Session 14 13-May-19	Conclusion	Wrap up, Class Discussion, Review	
Session 15 20-May-19	Finals Week		FINAL EXAM

Tests and Quizzes

- Mid-term Exam April 1st
- Final Exam May 20th

Course Materials

Required Textbooks & Materials

- Paul Brest et. al, *Processes of Constitutional Decision-Making: Cases & Materials* 7th ed. (Wolters Kluwer, New York 2018). ISBN-13: 978-1-4548-8749-2 (Bring text to each class).
- Any additional materials will be posted to NYU Classes.

Optional Textbooks & Materials

- N/A

Resources

- **Access your course materials:** [NYU Classes](https://nyu.edu/its/classes) (nyu.edu/its/classes)
- **Databases, journal articles, and more:** [Bobst Library](https://library.nyu.edu) (library.nyu.edu)
- **Assistance with strengthening your writing:** [NYU Writing Center](https://nyu.mywconline.com) (nyu.mywconline.com)
- **Obtain 24/7 technology assistance:** [IT Help Desk](https://nyu.edu/it/servicedesk) (nyu.edu/it/servicedesk)

Course Policies

Attendance and Tardiness

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 (for courses that meet once per week; for courses that meet twice per week, it is a one percent reduction per missed class).

To seek an excused absence for medical reasons, students must use the online absence reporting form within 24 hours of their first missed class. Students may be required to produce a doctor's note with that day's date, especially if the student has missed any classes already that semester or if exams/presentations/papers occurred in the missed class.

Non-medical absences must be discussed with the Academic Staff at least 7 days before the missed date(s) in question. If faculty members do not receive notification of an excused absence, 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 lecturer to apply the rule for

unexcused absences, which may include 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.

Final exams must be taken at their designated times. Final exams may not be taken early, and students should not plan to leave Washington, DC before the end of the finals week.

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 Assignment

- 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.
- 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.

Incomplete Grade Policy

An "incomplete" is a temporary grade that indicates that the student has, for good reason, not completed all of the course work. This grade is not awarded automatically nor is it guaranteed; rather, the student must ask the instructor for a grade of "incomplete," present documented evidence of illness, an emergency, or other compelling circumstances, and clarify the remaining course requirements with the instructor.

In order for a grade of "incomplete" to be registered on the transcript, the student must fill out a form, in collaboration with the course instructor and the academic administration at the site; it should then be submitted to the site's academic office. The submitted form must include a deadline by which the missing work will be completed. This deadline may not be later than the end of the following semester.

Academic Honesty/Plagiarism

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 lecturer. Your lecturer 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:

[NYU Academic Integrity Policies and Guidelines](#)

[NYU Library Guides](#)

Disability Disclosure Statement

Academic accommodations are available for students with disabilities. Please contact the Moses Center for Students with Disabilities (212-998-4980 or mosescsd@nyu.edu) for further information. Students who are requesting academic accommodations are advised to reach out to the Moses Center as early as possible in the semester for assistance.

Religious Observances

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 Washington, DC Academics team in writing via email at least 7 days before being absent for this purpose.

Classroom Etiquette

1. Please arrive on time; lateness is disruptive. If you must be late, please enter in an unobtrusive and quiet manner. Once 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. 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, respect and civility between students, and students and the Instructor, at all times.