PSCI 6301: AMERICAN CONSTITUTIONAL LAW AND THE SUPREME COURT

Instructor: Dr. Banks Miller
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This is a graduate level course; as such, be sure that you have met the perquisites for enrollment.

Course Description:

This is a class on the U.S. Constitution and the Supreme Court. The class is divided into two distinct sections. In the first seven weeks of the semester we will cover theories of constitutional interpretation and theories of judicial decision making. In the second half of the semester we will look at a number of key U.S. Supreme Court decisions interpreting the constitution. It is expected that you will use knowledge gained in the first half of the class to help you interpret the opinions that you read in the second half of the class. The class is taught as a seminar, meaning that your participation in class discussions of the assigned readings is crucial to a successful class.

Course Goals:

1. Students should be able to identify and critically assess the various theories of constitutional interpretation and judicial decision making.
2. Students should be able to understand and explain the holdings of major Supreme Court cases.
3. Students should be able to apply the constitutional and judicial decision making theories to decision making in actual Supreme Court cases.

Readings:

The two books listed below are required.

2. Louis Fisher and Katy J. Harriger. American Constitutional Law (8th ed.). Durham, N.C.: Carolina Academic Press. Make sure that you purchase the single edition, not one of the two volume editions. This book is referred to as ACL in the syllabus and all of the assigned cases come from ACL.

Additionally, this course assumes some background knowledge of how courts operate and what the law, particularly in the U.S. Supreme Court, means. If you do not have this background knowledge, I recommend that you purchase Lawrence Baum’s The Supreme Court (9th ed.). This is an undergraduate text that will allow you to come quickly up to speed on the basics of the
Supreme Court. There is also a good deal of background information on the Court in the beginning chapters of the Segal and Spaeth text.

The majority of readings in the first half of class come from journal articles, primarily in political science, that are either available online or that I will make available on the class website. The readings from the second half of the class come from the casebook. In general, in the second half of the class, you should read the material in the order in which it is listed (and be sure to read the headings for each of the cases which will help you to determine what is happening in the case).

Grades:

There are two components to your grade in this course. First, there are two examinations. The first examination will occur in the seventh week and will cover all of the material over constitutional theory and judicial decision making. The second exam will occur in the final week of class and will ask you to apply the theories we learn in the first half of the class to the cases that we will work through in the second half of the class. Together, the exams are worth 75% of your grade and will almost exclusively involve essays.

The second component of your grade comes from your participation in class. Specifically, you will be responsible for leading the discussion once in the first half of class and once in the second half of class. You will probably share discussion responsibilities with another student in the class each of the two weeks that you are responsible for discussion. As the discussion leader, your job is to come to class with several questions that are likely to stimulate discussion in class and that engage the material on a sophisticated level. Your skill as a discussion leader, as well as your participation in discussion when you are not a discussion leader, will be worth 25% of your grade. We will assign discussion leaders during the first class period.

The grading scale is as follows:

A = 90-100%
B = 89-80%
C = 79-70%
F = Below 70%

Course Outline:

1. Legal Approaches
   a. Constitutional Theory
   b. Constitutioanl Interpretation
   c. Importance of Law in Decision Making
2. Attitudinal Approaches
3. Strategic Approaches
   a. Intra-Court
   b. Inter-Court
4. Constitutional Law
   a. Structure of Government I
   b. Structure of Government II
   c. Structure of Government III
   d. Structure of Government IV
   e. Civil Rights and Liberties I
   f. Civil Rights and Liberties II
   g. Civil Rights and Liberties III

Class Schedule:

Class 1: Introduction and Approaches to Judicial Decision Making

Judicial Decision Making and the U.S. Constitution

Class 2: Constitutional Theory


Class 3: Constitutional Interpretation


Class 4: The Importance of Law in Decision Making

**Class 5: The Attitudinal Model**


**Class 6: Strategy**

**Intra-Court Strategy**


**Inter-Branch Strategy**


**Class 7: Examination I (30%)**

**Constitutional Law and the U.S. Supreme Court**

**Class 8: Structure of Government I: Establishing the Power of Judicial Review**

1. Article III (U.S. Constitution)
3. Marbury v. Madison (1803)
4. Martin v. Hunter’s Lessee (1816)
5. Eakin v. Raub: Gibson’s dissent (1825)
6. Ashwander v. TVA: Brandeis concurrence (1936)

**Class 9: Structure of Government II: Legislative Power**

1. Article I (U.S. Constitution); especially §§ 8-10
2. McCulloch v. Maryland (1819)
3. United States v. Curtiss-Wright Export Cop. (1936)
4. Barenblatt v. United States (1959)
5. INS v. Chadha (1983)
6. *ACL*: pp. 219-221
Class 10: Structure of Government III: Executive Power and Separation of Powers

1. Article II (U.S. Constitution); especially §§ 2-4
5. *ACL*: pp. 247-249 & 256-258
6. Youngstown Sheet and Tube Co. v. Sawyer (1952)

Class 11: Structure of Government IV: The Commerce Clause

2. Gibbons v. Ogden (1824)
3. *ACL*: pp. 324-325
4. Hammer v. Dagenhart (1918)
5. *ACL*: pp. 332-335
6. National Labor Relations Board v. Jones and Laughlin Steel Corp. (1937)
7. Wickard v. Fillburn (1942)
8. *ACL*: pp. 347-352

Class 12: Civil Liberties I: Freedom of Speech/Expression

1. First Amendment
2. *ACL*: pp. 453-460
6. *ACL*: pp. 496-501
8. *ACL*: pp. 528-538

Class 13: Civil Liberties II: The Right to Privacy

1. Ninth Amendment
2. *ACL*: pp. 885-889 & 892-894
4. *ACL*: pp. 896-903
6. *ACL*: pp. 923-925
7. Cruzan v. Director, Missouri Dept. of Health (1990)
8. *ACL*: pp. 929-934

Class 14: Civil Liberties III: Equality

1. Fifth and Fourteenth Amendments
2. ACL: pp. 760-764.
3. Plessy v. Ferguson (1896)
4. ACL: pp. 769-777
6. ACL: pp. 803-812
7. Regent of the Univ. of California v. Bakke (1978)
8. ACL: pp. 836-844
10. ACL: pp. 950-964

Class 15: Examination II (45%)