POLS 385  
Comparative Constitutional Law & Politics  
Spring 2009  
Room: TARB 106  
T & TH: 1:00 p.m. - 2:15 p.m.

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Course Description  
This course is an introduction to comparative constitutional law and politics. The course introduces students to the distinct ways by which constitutional judges around the world have resolved identical constitutional questions. We use that information to learn about how constitutional doctrine influences our ability to solve core sociopolitical and economic dilemmas through constitutional design.

Reading Material  
Primarily, we will read out of the Jackson and Tushnet text (denoted JT below). Additional material may be accessed via the Internet, Blackboard or the electronic course reserve, as described below. The following is a full citation for our casebook.


If you do not purchase JT through the bookstore, be sure that you request the correct ISBN. Also, be sure to purchase the correct edition.

Course Goals  
Students should be familiar with the sociopolitical and economic problems constitutions are designed to resolve, and they should be able to discuss how constitutional interpretation influences our ability to solve these problems. Also, students should be able to discuss distinct methods of constitutional interpretation, and by using one of these methods, they should be able to analyze the implications of new, hypothetical fact situations.

Class Meetings  
I will lecture a few times during the semester; however, most classes will involve a discussion of the assigned readings. I encourage voluntary discussion; however, I will often get us started by calling on one of you. It is likely that I will follow questions up with further questions. Expect to be called on at least once during the semester. This means that you need to come prepared. As I note below, your grade will be influenced by your preparation.
Grading
Your final grade is a weighted average of the following components:

1. Attendance/Participation (10%)
   Attendance is mandatory. You are expected to come to class prepared to speak. To help prepare, I encourage you to write legal briefs for each case.

   Legal briefs are personal. There is no single way to write them. The following constitutes a reasonable set of information you should include.
   a. Court
   b. Case identification
      a) Case name
      b) Year of decision
   c. What circumstances triggered the legal dispute?
   d. What statute (statutes) is (are) involved in the case?
   e. What constitutional provision is at issue?
   f. What is the basic constitutional question the Court is answering?
   g. What was the outcome of the case?
   h. What is the rule that the Court announces?
   i. What is the reasoning behind the decision?
   j. Other views (concurring or dissenting opinions)?

2. Two Examinations (Each worth 30% of your grade)

   Exam 1 will be held in class on March 5. Exam 2 will be held during finals week on Thursday, April 30, from 4:30 – 7:00 p.m. Exams will require you to develop short, essay-style responses to questions concerning core issues we cover in class. You should be able to define key concepts. You should be familiar with common theoretical problems in constitutional politics and corresponding theoretical answers. You should be able to summarize the empirical tests of these theories we cover in class. Finally, you should be able to apply constitutional rules to new, hypothetical fact situations.

3. Collective Decision-Making Exercise (30%)
   You will be assigned to a mock constitutional court. I will name a chief judge (chief justice or president if you like), who will be responsible for guiding your conference discussions. Per U.S. Supreme Court practice, the chief judge will assign the opinion if he/she is in the majority. Otherwise, the most senior judge in the majority will assign the opinion. You will meet twice during class, but may communicate with each other as often as you like.

   At the first in-class meeting, you will each bring draft opinions resolving the constitutional problem I assign to your court, copies of which are given to me. You will then discuss the cases together, take votes on the merits, and assign an initial opinion writer. The opinion writer is expected to send drafts around to the court, seeking suggestions. This is done via Writeboard, a web-based software for collective writing assignments. If you do not agree with the majority opinion, you may draft a dissent or a concurrence. Separate opinion drafts must also be circulated via Writeboard. I will monitor participation on each court.

   At the second in-class meeting, you may choose to submit a finished product or you may elect to continue revising. The chief judge is responsible for turning-in hard copies of all opinions to me on the date indicated on the syllabus.

Your final grade is a weighted average of the following components:
Extra-Credit Work
Under no circumstances will extra credit work be permitted.

Email
I expect you to check your email. You are responsible for the material I send electronically.

Late Paper Policy
Hard copies of all opinions are to be turned in to me personally on the announced due date during the first 10 minutes of class. Any opinion turned after this period expires will be considered one day late. I will deduct one letter grade for each day that the paper is late.

Late Exam Arrival/Missed Exam Policy
Students will be allotted the entire class period for exams occurring during the semester. For final exams, students will be allotted the entire final exam period that the University has appropriated. Students are expected to be in class for the beginning of the exam. If a student is late by 10 minutes or more, I will deduct 10 points from her final grade.

Absences for exams will be excused for participation in formally sanctioned University events if the proper documentation is provided to the instructor prior to the event. Absences will also be excused for extraordinary events if they are accompanied by sufficient (i.e. Health Services Excuse Forms) documentation, as defined above under “absence policy” within two calendar days of the absence or late arrival. The instructor reserves the right to determine what constitutes an extraordinary circumstance.

If the student has been excused for the absence, she will have five working days to make up a missed exam. The instructor reserves the right to administer makeup exams of any format (multiple choice, short answer, essay), which may not necessarily correspond to the original exam’s format. If a student misses an exam and does not have an excused absence, the student will receive a zero for the exam.

Note on Extraordinary Circumstances
Under no conditions will a “power-outage” or an “alarm clock failure” constitute an extraordinary circumstance.

Final Course Grades
Final course letter grades will reflect the Department of Political Science’s grading standard, detailed below. Clearly, it is impossible for each assessment to reflect the standard exactly. Instead, the assessments, taken as a whole, are designed to produce a final grade that reflects the department’s standards.

Department of Political Science Grading Standard
A Exceptional Performance
Consistently outstanding work on all course-related tasks at a level that distinguishes the student from other members of the class. A comprehensive and incisive command of the
issues, literature, and substantive information relevant to the course. A frequently demonstrated exceptional capacity for original, creative, critical and logical thinking. The ability to master and integrate large amounts of factual material and abstract theories. An outstanding ability to discuss effectively course subject matter using both written and oral communication skills.

**A- Excellent Performance**
Consistently strong work on all course-related tasks. A comprehensive command of the issues, literature, and substantive information relevant to the course. A clearly demonstrated capacity for original, creative, critical and logical thinking. Understands well and can integrate the relevant factual and theoretical material central to the course. A strong ability to discuss effectively course subject matter using both written and oral communication skills.

**B+ Very Good Performance**
Consistently above average work on all course-related tasks. A very good grasp of the issues, literature, and substantive information relevant to the course. A generally demonstrated capacity for original, creative, critical, and logical thinking. A very good command of factual and theoretical material, and some capacity to integrate the two. A solid ability to discuss effectively course subject matter using both written and oral communication skills.

**B Good Performance**
Good and generally consistent work on all course-related tasks. A general understanding of the issues, literature, and substantive information relevant to the course. Modest evidence of the capacity for original, creative, critical and logical thinking. A good understanding of factual and theoretical material, but limited evidence of the capacity to integrate the two. A basic ability to discuss effectively course subject matter using both written and oral communication skills.

**B- Satisfactory Performance**
Satisfactory work on course-related tasks. A reasonable understanding of the issues, literature, and substantive information relevant to the course. An infrequently demonstrated capacity for original, creative, critical and logical thinking. Understands at a basic level the facts and theories related to the course, but demonstrates weak integration skills. A limited or inconsistent ability to discuss effectively course subject matter using both written and oral communication skills.

**C+/C/C- Adequate Performance**
Adequate performance on course-related tasks. An understanding of the basic elements of the issues, literature, and substantive information relevant to the course. A rarely demonstrated capacity for original, creative, critical and logical thinking (C+). An inability to go beyond a recitation of basic factual material related to the course (C). Demonstrated weaknesses in the ability to discuss effectively course subject matter using both written and oral communication skills (C-).

**D/D+ Minimal Passing Performance**
Barely acceptable work on course-related tasks. A generally superficial and often inconsistent familiarity with the issues, literature, and substantive information relevant to the course. A failure to demonstrate the capacity for original, creative, critical and logical thinking related to course content (D+). An uneven understanding of basic factual material related to the course; no evidence of fact/theory integration. Demonstrates
significant gaps in the ability to discuss effectively course subject matter using both written and oral communication skills (D).

**F Unacceptable Performance**

Fails to meet minimum course expectations. Unable to understand even the most basic elements of the issues, literature, and substantive information relevant to the course. Demonstrates an inability to engage in coherent written or oral discussion of course material. Does not satisfy specific course expectations with respect to attendance, deadlines, participation, etc.

**Incomplete Grades**

No incomplete grades will be given unless there is an agreement between the instructor and the student prior to the end of the course. The instructor retains the right to determine legitimate reasons for an incomplete grade.

**Integrity of Scholarship**

I will follow the guidelines established by Emory College, which can be found at http://www.college.emory.edu/current/standards/honor_code.html. In short, don’t cheat. The benefits are small. Even if the probability of getting caught is tiny, the costs of getting caught are huge.

**Courtesy in the Classroom.**

Classroom courtesy is necessary to ensure that all students have the opportunity to learn without distractions. This means no cell phones, talking during lectures (unless recognized by the professor or discussion leader), reading newspapers, etc. during class. If you must have a cell phone to receive emergency calls about kids or other family members, keep it on “vibrate.” Entering and leaving is distracting to me and to other students. Therefore, you need to be on time for class and stay until the end. If you must enter late or leave early, please inform me before class begins and take the seat nearest an exit and enter or leave as quietly as possible. Also, please stay with the door to make sure it does not ‘bang’ as you enter or leave. Repeated disruption of class may lead to penalties that reduce your final grade.

Class discussions of political issues can often stimulate strong feelings and heated debate. Because this is a college classroom, all discussions need to be scholarly. Scholarly comments are:

- Respectful of diverse opinions and open to follow up questions and/or disagreement.
- Related to the class and course material. Scholarly comments advance the discussion about issues related to the course and/or course material rather than personal beliefs.
- Are delivered in normal tones and in a non-aggressive manner.

Unacceptable behaviors in our classroom include:

- Personal attacks. This includes attacks on a person’s appearance, demeanor, or political beliefs.
- Interrupting other students is unacceptable. Raise your hand and wait to be called on either by the discussion leader or myself to prevent this problem.
- Using raised tones, yelling, engaging in arguments with other students, and being physically aggressive are unacceptable.
- Ignoring my authority to protect the integrity of the classroom is unacceptable. When you are asked to discontinue a conversation that violates the guidelines that are outlined above, I expect you to stop.
Students with Disabilities

If you anticipate needing any type of an academic accommodation in this course or have questions about physical access, please discuss this with the instructor within the first week of class. Students with disabilities needing academic accommodations should consult the Office of Disability Services at 404-727-6016 (TDD: 404-712-2049).

This syllabus and other class materials are available in alternative format upon request.

Course Schedule

January 15 – Course Introduction

January 20 – Political Problems, Constitutional Solutions
• JT, 212-228

January 22 – Political Problems & Constitutional Limits 1: Courts as Veto Players?
• Marbury v. Madison (ECR)
• Lochner (ECR)
• JT, 585-592

January 27 – Political Problems & Constitutional Limits 2: Collective Action and Coordination
• Southern Pacific Company v. Arizona (ECR)
• Hunt v. Washington State Apple Advertising Commission (ECR)
• JT, 941-950

January 29 – Constitutional Limits & Constitutional Location 3a: Rights
• Roe v. Wade (ECR)
• Planned Parenthood v. Casey (ECR)

February 3 – Constitutional Limits & Constitutional Location 3b: Rights
• JT, 75-129

February 5 – Constitutional Courts: Structure
• JT, 465-494
• Skim Rios-Figueroa and Navia (ECR)

February 10 – Constitutional Interpretation: Originalism and Purposivism
• Scalia (Bb, External Links)
• Barak (Bb, Readings)

February 12 – Constitutional Interpretation: Foreign Sources
• No reading! 😊
• Scalia and Breyer Debate

February 17 – Constitutional Interpretation: Proportionality (Standards vs. Rules)
• JT, 652-683
February 19 – Constitutionalism without a Constitution
  • JT, 365-378 & 451-464

February 24 – Constitutionalism without Entrenchment
  • JT, 414-425 & 437-449

February 26 – Separation of Powers (Emergency Powers)
  • JT, 840-846

March 3 – Separation of Powers (Political Questions)
  • JT, 891-925

March 5 – Exam 1

March 10 – Spring Break

March 12 – Spring Break

March 17 – Religious Establishment
  • JT, 1390-1431

March 19 – Religious Expression
  • JT, 1431-1467

March 24 – First Court Meeting
  • Individual Opinion Due

March 26 – Collective Research Day (No class)

March 31 – Hate Speech
  • JT, 1484-1528

April 2 – Second Court Meeting

April 7 – Hate Speech
  • JT, 1550-1587

April 9 – Positive Rights
  • JT, 1638-1661

April 14 – Positive Rights
  • 1661-1708

April 16 – Does Formality Influence Legitimacy?
  • Tyler, TBA
  • Gibson, Caldeira and Baird (1998) (ECR)

April 21 – Does Doctrine Influence Decision-Making?
  • Segal and Spaeth (2002), TBA
April 23 – Open Questions & Review
  • Readings TBA, but count on about two social science articles

April 30 – Final Exam (4:30 p.m. - 7:00 p.m.)
  • Opinions Due
  • Peer Evaluation Due