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Hunter College, CUNY
Department of Political Science
POLSC 340: Constitutional Law: Organizing the Government
MTH 8:10-9:25PM
Hunter West Building 1731

Course Description: How do political and social dynamics influence constitutional development in the United States? This course examines how American constitutionalism structures the foundations of the United States political system. We will examine Supreme Court process and look at some of the political and legal processes that have shaped constitutional development from the founding to the present. The course focuses on issues related to the two most important features of the American constitutional system: separation of powers and federalism. The course pays particular attention to the way constitutional development has been shaped by efforts to regulate economic activity and labor movement activism. We will also consider the political context in which the Supreme Court makes constitutional law, the effect of Supreme Court power on democratic processes and electoral accountability.

This course is designed for students with an interest in American political and legal institutions, legal processes, the politics of law, American political history, and the role of courts in society. No prior training in constitutional law is expected.

Course Text: Louis Fisher and Katy J. Harriger, Eleventh Edition, 2016, *American Constitutional Law, Volume I, Constitutional Structures: Separated Powers and Federalism*. Durham, NC: Carolina Academic Press (Paperback List Price: \$59.00) (**Available at Shakespeare & Co.**)

Readings: The readings for the course consist of the course text (Fisher & Harriger, *American Constitutional Law, Volume I, Constitutional Structures: Separated Powers and Federalism*) and PDFs of additional case excerpts and reading materials. Most of the readings are excerpts from opinions written by Supreme Court justices (i.e., excerpts of Supreme Court cases). Some of the excerpts come from constitutional law textbooks while other excerpts were created by the instructor. Using excerpts of cases makes court cases more readable and focuses the student's attention on materials that are most relevant for course assignments. Students must read from the excerpts on Blackboard and in the course text rather than from some other source. If students read from another source, they may miss important information highlighted in the excerpts and will almost certainly be distracted by information that is not relevant to the course.

I require you to bring the scheduled readings, in some format, to class each day. Some additional short texts (e.g., timely news articles) may be emailed to you and/or added to Blackboard during the course.

Students are also required to read the United States Constitution for this course. It is strongly recommended that students refer to the text of the Constitution as they read cases, study for the exam, and think about the course material.

Online Resources: Online resources will be made available through Blackboard. The course Blackboard page will have information about the course, course readings, links to assignments, and study questions. Students are responsible for information that is made available during lecture even when that information is not available on Blackboard.

Grading: Grading for this course will be based on two exams, two written assignments, and in-class participation. Your final grade will be calculated based on the below percentages.

Case Brief Assignment:		Due September 7th (Part of Participation Grade)
1st Written Assignment:	10%	Due October 12th
Midterm:	20%	October 19th
2nd Written Assignment:	25%	Due December 7th
Final:	30%	
Participation:	15%	

The assignments listed here are the only assignments for the class. *There will be no extra-credit assignments.*

Midterm & Final Exam: The exams will test your knowledge of the assigned cases, related constitutional controversies, and your understanding of constitutional processes and concepts discussed in lecture. The exams will consist of short answer and short essay questions and must be taken at the scheduled times.

Written Assignments: The written assignments will ask you to write analytic essays. You will also be asked to construct and explain constitutional arguments in your own words. You will not be required to complete outside research for the written assignments. Clear and effective writing are essential for receiving a good grade on the assignments.

Participation: Students must keep up with class readings and show intellectual engagement with the material. I expect each student to participate in thoughtful discussion and respect others' opinions. Participation is based on active engagement not mere attendance. Class activities that will be counted towards participation credit include case briefs, free writes, debates, and group activities. If you are in class and participate in the day's activity, you will earn full points for the day. *I will give pop quizzes if I feel that the class is not completing/grasping the assigned material.*

Penalty for Late Assignments: The penalty for late papers is 10 points (on the 100 point scale) per calendar day. This substantial penalty is established as a deterrent to make sure that you submit your work on time. The penalty is not supposed to be fair compensation for extra time

spent on the paper. You are much better off handing in work on time and avoiding the penalty. Please respect assignment deadlines.

A Word of Warning on Assignments, Grading, and Expectations: I try hard to make expectations for the class clear and to set standards that are applied fairly to all students in the class. It is your responsibility to meet these expectations during the entire quarter. The assignments are weighted to reflect both their importance and the expected learning curve over the term. Because of the complexity of the course materials, it is not possible to cram at the last minute as assignment deadlines approach in this course and earn a passing grade. I do not allow do-overs for poor grades on assignments. I do not give extra credit under any circumstances.

Class Organization: Class time will consist of lecture and group activities. These activities are meant to facilitate student understanding of the material and prepare students for the exams and written assignments. Group activities might include debates, small group discussions of difficult course concepts, and large group discussions of the course materials. In class, I encourage students to ask questions. Your questions can prove vital to your own and your classmates' understanding of the course material and will contribute to provocative discussions.

Laptop and Cell Phone Use: When you are in lecture, please refrain from using a laptop unless you are using one only to take notes for this class. *Do not use a cell phone or smart phone for any reason during class.*

Office Hours and Email: My office hours and email are listed at the top of the syllabus. I am also sometimes available by appointment at other times. If you would like to make an appointment, please contact me by email. I encourage all students to take advantage of my office hours.

Preparing for Class: The readings for the class are mostly excerpts from judicial opinions in Supreme Court cases. Because judges write in the peculiar legitimating language of the law, these opinions can be difficult to understand. Judges do not write opinions in order to explain the issues in case clearly or honestly. They are not trying to write so that it is easy for a college student to study for an exam. They write opinions in an attempt to justify their rulings. They are producing arguments in favor of a particular outcome, not creating an accurate record for their reasoning in the case. Judges will sometimes deliberately obscure important issues in a case, offer misleading justifications, and omit very important facts or considerations.

Because of the way judges write, you will need to read carefully and read between the lines to develop and adequate understanding of the cases. You will need to read each case more than once before you will understand it. For most students, it takes considerable time and practice to learn to read and understand cases. Reading court cases should get easier as the term progresses. To help you prepare for class and exams, you should take the time to answer the study questions and write briefs as you read the cases.

Study Questions: Several sets of study questions will be made available on Blackboard throughout the term. The study questions are designed to help you get what you need from the readings. The questions draw attention to some important but not obvious aspects of the cases

and other readings. When you are not sure how to answer one of the study questions, you should ask about the question in class. Study questions may appear on the exams in modified form. Because this is a condensed summer course, we will directly address most of the study questions during lecture/discussion.

Briefs: A brief is a short (about one page) written summary of the case. I strongly recommend that you create a brief for each of the assigned cases during the quarter. Taking the time to create a written analysis of each case in your own words will help you to understand and remember the material. Your briefs may also be useful to you if you continue to study law after this class. There is no universally accepted format for a brief. However, you can find a good model brief format, as well as additional information about naming and briefing cases, at: <http://www.lib.jjay.cuny.edu/research/brief.html>. You might also want to read a handout called, "How to Read a Case," prepared by Professor Julie Novkov at SUNY Albany (<http://www.albany.edu/~jn293713/profession/caseguid.pdf>).

Academic Conduct: I will enforce Hunter College, CUNY's student conduct code, including the policy on plagiarism. The CUNY policy on academic integrity can be found at: <http://www.hunter.cuny.edu/studentaffairs/student-conduct/academic-integrity/cuny-policy-on-academic-integrity>.

Students with Disabilities: All students with disabilities and medical conditions are encouraged to register with the Office of AccessABILITY for assistance and accommodation. For information and an appointment contact the Office of AccessABILITY located in Room E1214, or call 212-772-4857 /or VP 646-755- 3129 or email accessability@hunter.cuny.edu. If you have a letter from this office indicating that you require accommodations, please present the letter to me as soon as possible so that I can make the necessary arrangements.

Readings Schedule/Course Outline:

The online readings are identified on Blackboard by the date of the corresponding lecture or are available in the course text. You should complete each set of readings **before** the class meeting for the date listed there and on this schedule. I will try and stay on this schedule, but will make adjustments as necessary. Adjustments in the reading schedule will be announced in class.

CONSTITUTIONAL LAW: ORGANIZING THE GOVERNMENT
READING SCHEDULE

* = Reading Online

Fisher & Harriger = Course Text (Louis Fisher and Katy J. Harriger, Eleventh Edition, 2016, *American Constitutional Law, Volume I, Constitutional Structures: Separated Powers and Federalism*. Durham, NC: Carolina Academic Press)

Introduction to the Course and the Constitution

- August 28** Introduction to the Course & Constitutional Structure
- August 31** ***No Class; Out of Class Assignment, Due September 7***
- Sept 7** Fisher & Harriger (Appendix I, The Constitution of the United States)
Fisher & Harriger (Chapter 4: Judicial Organization)
- Sept 11-14** *Baum, *The Supreme Court*, Selections (Online)
Fisher & Harriger (Chapter 5: Decision Making)

PART ONE: JUDICIAL POWER, & CONSTITUTIONAL DEVELOPMENT

Judicial Review

- Sept 18-25** Fisher & Harriger (Chapter 2: Judicial Review)
Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
Cohens v. Virginia (1821)

Limits on Judicial Power

- Sept 28-Oct 2** Fisher & Harriger (Chapter 3: Threshold Requirements)
- Oct 5** Fisher & Harriger (Chapter 10: Efforts to Curb the Court)

Constitutional Politics Outside the Court: Who Has the Last Word?

*****1st Written Assignment, Due October 12th*****

Oct 12-16 Fisher & Harriger (pp. 20-30, Begin at “Who Has the Last Word?”)
**Burwell v. Hobby Lobby* (Online)

*****Celebration of Knowledge (Midterm) Thursday October 19th*****

PART TWO: ENUMERATED POWERS, FEDERAL/STATE RELATIONS, AND ECONOMIC DEVELOPMENT

Necessary and Proper Clause & The Commerce Clause: Early Developments

Oct 23-26 **McCulloch v. Maryland* (1819) (Online)
Fisher & Harriger, pp. 325-330
Gibbons v. Ogden (1824)

Struggles over Regulating a Nationalized Economy: The Civil War to the New Deal

Regulating Business

Oct 30-Nov 2 **Read Assigned Cases in Chronological Order**
**United States v. E.C. Knight* (1896) (Online)
Fisher & Harriger, pp. 331-337
Champion v. Ames (1903)
Hammer v. Dagenhart (1918)
**Stafford v. Wallace* (1922) (Online)

Regulating Labor

Nov 6-9 *Industrial Unions and the Pullman Strike (Online)
**In re Debs* (1895) (Online)
**Loewe v. Lawlor* (1908) (Online)

The Great Depression & The New Deal Crisis

Nov 13 **Home Building and Loan Assn v. Blaisdell* (1934) (Online)
Fisher & Harriger, pp. 337-348
Carter v. Carter Coal Co. (1936)
NLRB v. Jones and Laughlin Steel Corp (1937)
United States v. Darby Lumber (1941)
Wickard v. Filburn (1941)

Nov 16 *****No Class; Reading Questions*****

Commerce and Amendment Enforcement Powers: Federal Civil Rights Legislation

- Nov 20** **Civil Rights Cases* (1883) (Online)
 **Heart of Atlanta Hotel v. United States* (1964) (Online)
 **South Carolina v. Katzenbach* (1965) (Online)

**PART THREE: THE MOST ACTIVIST COURT IN HISTORY? THE
CONTEMPORARY CONSERVATIVE COURT**

**The Commerce and Spending and Taxing Powers: Gun Free School Zones, Violence
Against Women, Marijuana, & Healthcare**

- Nov 27-30** Fisher & Harriger, pp. 354-366
 Lopez v. Gonzalez (1995)
 United States v. Morrison (2000)
 Gonzales v. Raich (2005)

*****Final Written Assignment Due December 7th at Beginning of Class *****

- Dec 4-7** Fisher & Harriger, pp. 366-382
 Bailey v. Drexel Furniture Co. (1922)
 Steward Machine Co v. Davis (1937)
 South Dakota v. Dole (1987)
 NFIB v. Sebelius (2012)
 King v. Burwell (2013)

- Dec 11** **Shelby County v. Holder* (Online)
 *Rutenberg, "A Dream Undone" (Online)

*****Celebration of Knowledge (Final Exam) December 14th 9:00 to 11:00AM, HW 1731 *****