POLI 4021: The American Constitution and Civil Liberties – Fall 2010

Dr. Laura Moyer
Office: 208B Stubbs Hall
Classroom: 218 Coates Hall
Class: 9:40-10:30 MWF

Course Description and Objectives

**Pre-requisite: POLI 2051 or equivalent**

This course uses the traditional case method as well as a court simulation (moot court) to introduce students to the study of American constitutional law. Because the case law on civil liberties and civil rights is vast, we will primarily focus on due process, privacy doctrine, and the First Amendment protections for speech, press, and religion. In addition, we will examine the development of Equal Protection doctrine as it has been applied to classifications based on race, gender, and sexual orientation.

Students will learn how to (1) distill cases to their most important components, (2) analyze and apply legal arguments about civil liberties and civil rights, (3) distinguish between and analyze different modes of Constitutional interpretation, and (4) think critically about the role of courts in making legal and social policy.

Requirements for the Course

**Participation**

Attendance is a necessary, but not sufficient, condition for a good participation grade. Students are expected to attend class on time and for the duration of the class period, read all assigned materials before class, complete all written assignments on time, and treat other students and the instructor with respect (including on Moodle). **Please turn off phones and put away iPods, newspapers and other unrelated materials before class begins. NO LAPTOPS are allowed.** The quality of participation will be evaluated through both spoken and written contributions to class.

*Because the study of law requires both heavy reading and cumulative comprehension, it is essential that students **brief all assigned cases before coming to class.** The process of briefing will prepare you for class discussions and save you many hours of time in test preparation. **Your participation grades will be determined by your ability to convey the information in your briefs, as well as your ability to analyze the implications, strengths, and weaknesses of legal arguments.** Earning an “A” involves regularly examining the implications of assigned readings, going beyond assigned readings, or analyzing alternative interpretations. Earning a “B” entails showing understanding of legal arguments and their implications. Merely repeating or describing reading is “C” work, though the inability to do at least that when asked will result in lower grades.

**Exams**

In-class discussions and the readings listed on the class schedule will serve as the basis for your exams. There will be **one mid-term and one final exam** to test your understanding of concepts as well as your ability to apply and analyze them. Students are expected to be present on all testing days. **Students who miss the midterm for any reason will simply be given a cumulative final exam** that includes the missed material. (The score on the cumulative final will count twice.) **It is the student’s responsibility to alert the instructor via email by December 3 that he or she will need a cumulative final exam.** Make-ups for the final exam are totally at the discretion of the instructor and will be only for those absences necessitated by a documented & legitimate emergency as governed by university policy.

**Special Accommodation**
*Graduate students, students wishing to receive honors credit, and students with documented disabilities who require special testing accommodations: please notify me privately at the beginning of the semester, so that we can make appropriate arrangements.

**Random brief checks, “hypotheticals” and quizzes**
Each day I will randomly select several students to **submit a briefed case or cases** to me for a grade (check plus, check, check minus). The purpose of this is to evaluate your progress in developing the skill of briefing, not so much to determine whether the content is “right” or “wrong.” As such, the **briefs must represent your own work and adhere to the university policy on academic honesty**. There will be no make-ups; however, at the end of the semester, I will drop your lowest brief grade.

There will also be two (2) **hypothetical exercises** and at least one (1) **section quiz** during the semester. To encourage you to stay on top of briefing cases, these will be open notes (but **not** open book). The purpose of these assignments is to alert you to gaps in your notes and understanding BEFORE each major exam: they are active study tools. Makeups for these assignments are only granted for legitimate emergencies under university policy and if notification occurs the day of the assignment.

**Supreme Court Simulation**
Every student in class will participate in one of two separate simulations which will run concurrently. Each simulation will involve the consideration of a hypothetical case that requires the resolution of a legal issue relevant to our course. Students will play one of the following roles: (1) a specific justice from the past or present, (2) an attorney who represents an organized interest filing an amicus brief, or (3) an attorney representing a direct party in the case. More information about this exercise will follow in class. **Failure to participate in fully in the simulation will negatively affect your grade.**

**Academic Honesty**
Every student is expected to be familiar with and abide by the University’s policy on academic honesty before performing any academic work. You can find these and the consequences for committing academic dishonesty at [http://www.lsu.edu/judicialaffairs](http://www.lsu.edu/judicialaffairs). Examples of academic dishonesty described in the Code include, but are not limited to cheating on tests, plagiarizing written work **from any source** (**including Wikipedia and your friends**), selling or buying academic assignments, writing a single paper for multiple classes, collaborating on an assignment without the instructor’s permission, and helping another student do any of these things. **All suspected violations will be reported**, and determinations of guilt or innocence will be made by the Office of Student Accountability.

**Grading Policy**

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<thead>
<tr>
<th>Component</th>
<th>Points</th>
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<tbody>
<tr>
<td>Midterm exam</td>
<td>20</td>
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<td>Written participation</td>
<td>5</td>
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<td>Final exam</td>
<td>20</td>
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<td>Briefs grade</td>
<td>10</td>
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<tr>
<td>Simulation</td>
<td>20</td>
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<td>Quizzes</td>
<td>10</td>
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<td>Spoken participation</td>
<td>5</td>
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<td>Hypotheticals</td>
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The course is on a 100 point scale. Borderline grades at the end of the course will be decided based on the quality of participation, not extra credit. Grades will **NOT** be discussed over email, due to confidentiality reasons; please make an appointment with me if you have a question about your performance in the class.

- A (90 & above)
- B (80-89)
- C (70-79)
- D (60-69)
- F (59 & below)

**Required texts**
- Craig R. Ducat. *Constitutional Interpretation*, 9th ed. (ISBN: 0-495-50284-7). Earlier, used editions are also acceptable, but be sure to check for changes in page numbers.
Additional readings posted on Moodle [Denoted as M on reading schedule]

Fall 2010: Important dates
- Drop period ends: Mon., Aug. 30/ Last day to add: Wed., September 1
- Last day to withdraw: November 5
- Last Day of Class: December 3
- Final exam: Thurs., December 9 (10:00 a.m. – noon)

Note: the syllabus represents a general plan for the course and may be subject to change, based on the discretion of the instructor.

Schedule of Readings and Assignments (to be read PRIOR to coming to class)

<table>
<thead>
<tr>
<th>Date</th>
<th>Reading</th>
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<tbody>
<tr>
<td>Mon., Aug. 23</td>
<td>Introduction to course</td>
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<td>Wed., Aug. 25</td>
<td>I. Introduction to Law and Judicial Power</td>
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<td>Reading:</td>
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<td>Ducat, pp. 26-40, 89-102</td>
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<td>Fri., Aug. 27</td>
<td>A. Supreme Court jurisdiction &amp; judicial review</td>
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<td>Reading:</td>
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<td>Ducat, pp. 3-26; How to brief a court case [on M]</td>
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<td>Brief case:</td>
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<td>Marbury v. Madison</td>
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<td>Mon., Aug. 30</td>
<td>Supreme Court jurisdiction &amp; judicial review (continued)</td>
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<td>Reading:</td>
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<td>Brief cases from Monday’s reading (pp. 3-26):</td>
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<td>Eakin v. Raub; Martin v. Hunter’s Lessee; Ex parte McCardle</td>
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<td>Wed., Sept. 1</td>
<td>Graded in-class participation exercise: judges in their own words</td>
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<td>Fri., Sept. 3</td>
<td>B. Interpreting Legal Texts</td>
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<td>Reading:</td>
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<td>pp. 76-102</td>
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<td>In class: Levinson, “On Interpretation: The Adultery Clause of the Ten Commandments”</td>
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<td>Mon., Sept. 6</td>
<td>NO CLASS: LABOR DAY</td>
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<td>Wed., Sept. 8</td>
<td>Interpreting Legal Texts continued</td>
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<td>Brief case:</td>
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<td>District of Columbia v. Heller  [on M]</td>
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<td>Fri., Sept. 10</td>
<td>II. Due Process and the “Incorporation” of the Bill of Rights</td>
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<td>Reading:</td>
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pp. 470-483 (pay close attention to Exhibits 8.1-8.3)

Brief cases:
Barron v. Baltimore; Slaughterhouse cases; Thomas’ concurrence in McDonald v. Chicago [on M]

Mon., Sept. 13  Due Process and Incorporation (continued)
Reading:
pp. 483-501

Brief cases:
Hurtado v. California; Palko v. Connecticut; Adamson v. California; Rochin v. California

Wed., Sept. 15  III. Economic Liberties
A. “Liberty of Contract” in the Dual Federalist Era
Reading:
pp. 423-438

Brief cases:
Slaughterhouse Cases; Munn v. Illinois; Lochner v. New York

Fri., Sept. 17  Liberty of Contract (continued)
Reading:
pp. 438-443

Brief cases:
Muller v. Oregon; Buck v. Bell [on M]; West Coast Hotel v. Parrish

Mon., Sept. 20  IV. Right of Privacy
A. Reproductive Rights & Abortion
Reading:
pp. 712-728

Brief cases:

Wed., Sept. 22  Right of Privacy (continued)
Reading
pp. 728-743

Brief cases
City of Akron v. Akron Center for Reproductive Health;
Planned Parenthood of SE Pennsylvania v. Casey;
Gonzales v. Carhart [on M]

Fri., Sept. 24  Right of Privacy (continued)
B. Right to Die
Reading
pp. 764-775
Brief cases
Washington v. Glucksberg; Vaccio v. Quill

Mon., Sept. 27
Right of Privacy [END OF MATERIAL FOR MIDTERM]
C. Anti-sodomy laws
Reading:
pp. 752-758

Brief cases:
Bowers v. Hardwick [on M]; Lawrence v. Texas

Wed., Sept. 29
**QUIZ** (Open notes, but not open book)

Fri., Oct. 1
**HYPOTHETICAL I** (Open notes, but not open book)

Mon., Oct. 4
V. First Amendment: Free Speech
A. What is speech?
Reading:
pp. 777-783

Wed., Oct. 6
B. “Clear and Present Danger”
Reading:
pp. 783-792

Brief cases:
Schenck v. United States; Gitlow v. New York

Fri., Oct. 8
“Clear and Present Danger” (con’t)
Reading:
pp. 792-810

Cases:
Thomas v. Collins; Terminiello v. Chicago; Brandenburg v. Ohio

Mon., Oct. 11
Catch up day/review for mid-term exam

Wed., Oct. 13
**MID-TERM EXAM**

Fri., Oct. 15
C. Free Speech: Time, Place, and Manner Limitations
Reading:
p.813-839

Brief cases:
Adderley v. Florida; Ward v. Rock Against Racism; Madsen v. Women’s Health Center; Rosenberger v. University of Virginia

Mon., Oct. 18
D. Symbolic Speech
Reading:
p. 859-870
Brief cases:
West Virginia State Board of Education v. Barnette;
Tinker v. Des Moines School District

Wed., Oct. 20  Symmetric Speech (con’t)
Reading:
pp. 870-888

Brief cases:
United States v. O’Brien; Texas v. Johnson; RAV v. City of St. Paul

Fri., Oct. 22  NO CLASS: FALL BREAK

Reading:
pp. 982-991

Brief cases:
Roth v. United States/Alberts v. California; Stanley v. Georgia

Wed., Oct. 27  Freedom of Press/Obscenity (cont’)
Reading:
pp. 991-1004

Brief cases:
Miller v. California; Paris Adult Theatre v. Slaton; NEA v. Finley

Fri., Oct. 29  VII. First Amendment: Religion (Establishment Clause)
Reading:
pp.1049-1064, 1068-1072

Brief cases:
Lee v. Weisman; Santa Fe Independent School District v. Doe [M]
Lemon v. Kurtzman; Zelman v. Simmons-Harris

Mon., Nov. 1  Establishment of Religion (con’t)
Reading:
pp. 1084-1096, 1098-1099, 1101-1106

Brief cases:
Edwards v. Aguillard
Alleghany v. ACLU
Van Orden v. Perry

Wed., Nov. 3  First Amendment: Religion (Free Exercise of Religion)
Reading:
pp.1106-1126

Cases:

Fri., Nov. 5

**HYPOTHETICAL 2: First Amendment**

Mon., Nov. 8

VIII. Equal Protection of the Laws

A. Race
Reading:
pp. 1127-1142

Brief cases:
Plessy v. Ferguson; Sweatt v. Painter; Brown v. Board of Education I, II

Wed., Nov. 10

Race (con’t)
Reading:
pp. 1145-1165

Brief cases:
Swann v. Charlotte-Mecklenburg Board of Education
Milliken v. Bradley
Parents Involved in Community Schools v. Seattle School District

Fri., Nov. 12

Equal Protection: Race (con’t)
Reading:
pp. 1171-1176

Brief cases:
Regents of California v. Bakke (esp. Powell’s plurality opinion)

Mon., Nov. 15

B. Equal Protection: Gender
Reading:
pp. 1283-1305
Sir William Blackstone [M]

Brief cases:
Frontiero v. Richardson
Craig v. Boren
United States v. Virginia

Wed. Nov. 17

C. Equal Protection: Sexual orientation
Reading
pp. 1311-1328
Prop 8 marriage decision [M]

Brief cases
Romer v. Evans
Goodridge v. Department of Public Health
Fri. Nov. 19 **JUSTICE PAPERS AND ATTORNEY BRIEFS DUE**
In-class preparation for oral argument

Mon., Nov. 22 ORAL ARGUMENTS (GROUP 1)
[class held at law school]

Wed., Nov. 24 Law school and graduate school discussion

Fri., Nov. 26 **NO CLASS: THANKSGIVING BREAK**

Mon., Nov. 29 ORAL ARGUMENTS (GROUP 2)
[class held at law school]

Wed., Dec. 1 CONFERENCE DELIBERATIONS (BOTH GROUPS)

Fri., Dec. 3 Course wrap-up and review for final exam

Dec. 9 **FINAL EXAM**
10:00-12:00 (218 Coates)