SSI 144

Constitutional Controversies

Fall 2017

**Instructor:** Prof. James Jasinski

404 Jones Hall

879-3463 (office direct line)

e-mail address: jjasinski@pugetsound.edu

Office hours:Office hours: noon-1:45 M and most W and by appointment

**Writing Center Course Liaison:** Rachael Laitila

**Course Assistant:** Frieda Poskanzer

**Overview of Course**:

In this seminar we will examine two different types of constitutional controversies. Extending on Sanford Levinson’s discussion in *Framed: America’s 51 Constitutions and the Crisis of Governance,* the first type of controversy on which we’ll focus concerns what provisions should be included in (or possibly removed/excluded from) the US Constitution while the second focuses on how to interpret the specific words, phrases, and clauses that can be found in the Constitution. We’ll devote our first full class period to unpacking this distinction. The first part of the course culminates with your analysis of the debate over a proposed balanced budget constitutional amendment (the BBA); the second part culminates with your completion of a final project that focuses on a recent Supreme Court case concerning the first amendment’s free speech clause. This seminar seeks to identify two specific strands of “constitutional argument,” enhance your understanding of these arguments in American history, nurture your ability to analyze and evaluate constitutional arguments, and provide you with opportunities to practice these forms of argument.

**Course Objectives**

In addition to the objectives identified at the end of the previous paragraph, this seminar will also fulfill the common learning objectives for seminars in scholarly inquiry. In

this seminar students will develop the intellectual habits necessary to write and speak effectively and with integrity. Students will refine their ability to engage primary, historical sources as well as develop their capacity to analyze judicial opinions. Students will increase their ability to develop effective arguments by learning to frame questions around a focused topic, to assess and support claims, and to present their work to an academic audience both orally and in writing.

Course writing assignments, especially the short assignments, will develop your ability to address: (a) important elements and conventions of standard written English (e.g. grammatical and syntactical rules, punctuation, etc.); (b) the range of lexical and stylistic resources available to speakers and writers; (c) organizational issues (at various levels); (d) audience.

Numerous class discussions will focus on refining your information literacy skills (including your ability to distinguish different information sources and your ability to evaluate information sources).

**Required Reading**:

During the first part of the course readings will be drawn primarily from Sanford Levinson, *Framed: America’s 51 Constitutions and the Crisis of Governance* (New York: Oxford University Press, 2012). Please bring a copy of the book with you to class when we are discussing it.

Additional readings for the first part of the course and virtually all of the daily reading assignments for the second part are available through the course’s moodle web site. Moodle readings will be in either a Word document or PDF format.

*All readings should be completed for the class period noted on the course schedule*. If you are ever confused about what reading assignment should be completed for a specific class period, it is your responsibility to request clarifica­tion.

**Since we will be discussing readings in class, *you need to bring a copy of each day’s reading with you to class* (in paper or electronic form).**

**A word of caution about accessing readings electronically.** If you choose to access readings electronically, make sure that the only thing open on your electronic device is the course reading (or readings) or possibly other relevant course materials. While I may occasionally encourage you to Google a person or event we are discussing in class, you **should not** use class time to check email, browse the internet, etc. **If I discover that students are using their electronic devices to access things other than class materials, I will ban all electronic devices from class.** If I resort to this option, you will still be required to bring a copy of each day’s reading with you to class. Finally, students who repeatedly neglect to bring required readings with them to class will be dismissed from those specific class periods for which they have not brought materials.

I will post additional documents on the moodle web site that elaborate on various course concepts (e.g. types of arguments). While these documents will not be listed in daily assigned readings, *you need to make the time to read this material. It is part of this course’s required reading.*

During the second half of the course in particular, I’ll provide a number of handouts that elaborate on course concepts/specific types of arguments. You will need to draw on the material in the moodle documents and handouts in preparing course projects and exams.

Finally, when we begin our discussion of interpretive controversies in early October, our class sessions will focus on specific legal cases and the Supreme Court opinions that decided (and dissented in) those cases. You should be prepared to use either print or on-line resources to (a) develop a basic grasp of the case (who are the parties, what is the central legal question, etc.) and (b) acquire a basic understanding of legal concepts and terminology that appear in the readings. A few of our short writing assignments will focus on these topics.

**Course Policies**

1. Students must comply with University policies regarding academic honesty. It is your responsibility to review the *Logger* on-line so that you avoid violating University academic honesty policies, especially those relating to plagiarism.

You must pay special attention to maintaining academic integrity when multiple students are working on the same topic for their projects (as will be the case for your mid-term and final projects). The fact that you and at least one other classmate are working on the same topic *does not* transform that assignment into a group project in which you would share resources with each other. *All course assignments are individual projects. Do not share your work with your classmates*

2. *Turn off* your cell phones before class.

3. Please do not sit in class with sweatshirt hoods over your head. It is rude.

4. Please review university emergency preparedness and response procedures posted at www.pugetsound.edu/emergency/ <<http://www.pugetsound.edu/emergency/>> .  There is a link on the university home page.  Familiarize yourself with hall exit doors and the designated gathering area for your class and laboratory buildings.    
   
If building evacuation becomes necessary (e.g. earthquake), meet your instructor at the designated gathering area so she/he can account for your presence.  Then wait for further instructions.  Do not return to the building or classroom until advised by a university emergency response representative.  
   
If confronted by an act of violence, be prepared to make quick decisions to protect your safety.  Flee the area by running away from the source of danger if you can safely do so.  If this is not possible, shelter in place by securing classroom or lab doors and windows, closing blinds, and turning off room lights.  Lie on the floor out of sight and away from windows and doors.  Place cell phones or pagers on vibrate so that you can receive messages quietly.  Wait for further instructions.

5. If you have a physical, psychological, medical or learning disability that may impact your course work, please contact Peggy Perno, Director of the Office of Accessibility and Accommodations, 105 Howarth, 253.879.3395. She will determine with you what accommodations are necessary and appropriate. All information and documentation is confidential.

6. Upon approval from the Dean of Students’ Office, students who experience a death in the family, including parent, grandparent, sibling, or persons living in the same household, are allowed three consecutive weekdays of excused absences, as negotiated with the Dean of Students. For more information, please see the Academic Handbook.

**Course Requirements**

***Quick Summary (see separate handout for details)***

1. A final project (project includes a mandatory oral presentation rehearsal, an in-class oral presentation, and an analysis essay) worth 25 points or roughly 25% of final grade. Your final project will focus on a recent Supreme Court case involving free speech assigned by the instructor. Your task will be to *analyze* two judicial opinions (you’ll present one analysis orally in class and the other in a written analysis paper). In this class analysis will involve identifying the main claims in each opinion and the *arguments* used to support those claims. Your final project will be due sometime between November 13 and December 6. We will determine final project due dates on Friday October 27.

2. A mid-term project analyzing the ongoing debate over whether the nation should adopt a balanced budget constitutional amendment (the amendment would require the federal government to have a yearly balanced budget). I’ll provide you with a number of speeches and essays supporting and opposing the amendment. Your task is to identify the common arguments being employed as well as use the “stock topics” framework to organize your analysis. The mid-term project will be due on Friday October 13. The mid-term project will be worth 25 points or roughly 25% of final grade.

3. A final exam with two parts: a take-home essay worth 15 points and an in-class short answer exam worth 10 points (roughly 25% of final grade). *Our final exam is scheduled for (no exceptions).* The in-class portion of the final exam will focus on (a) specific types of constitutional argument discussed in class, (b) specific types of general argument discussed in class and the moodle argument document, as well as (c) the stock topic analytic framework.

4. Five short writing assignments, each worth five points (25 points total or roughly 25% of final grade). Dues dates are listed on schedule below as well as on separate assignment handout. As you’ll see on schedule below, you’ll have seven opportunities to earn these 25 points.

You may hand in short writing assignments electronically if you want. To do so, attach a word doc version of your assignment to an email and send it to my email address. *Do not* send me work in pages, via google docs, or any other format. If you can’t attach your assignment to an email as a word doc, then you must bring a hard copy with you to class. If you are going to send me an assignment electronically, you must do so *before* class begins.

# Tentative Course Schedule (subject to minor changes)

Mon 8/28 Introduction to course.

Wed 8/30 Understanding Constitutional Controversies.

**Read:** Levinson, Ch. 1

Fri 9/1 Framework for Analyzing Policy Controversies or the “Constitution of Settlement.” **Read:** moodle assignments

**Short writing assignment #1 due**

Mon 9/4 Labor Day. No class.

Wed 9/6 What, if Anything, was Wrong with the Nation’s Constitutional Structure in 1787? **Read:** moodle assignments

Fri 9/8 Federalism.

**Read:** Levinson, Ch. 14

**Short writing assignment #2 due**

**Assign final project cases/topics**

Mon 9/11 A Republic vs. a Democracy

**Read:** Levinson, Ch. 4

Wed 9/13 Political Representation.

**Read:** Levinson, Ch. 5

**Short writing assignment #3 due**

Fri 9/15 Bicameralism.

**Read:** Levinson, Ch. 6; moodle assignment

Mon 9/18 Presidential/Executive Veto.

**Read:** Levinson, Ch. 7

Wed 9/20 Presidentialism/Electoral College.

**Read:** Levinson, Ch. 8; moodle assignment

**Short writing assignment #4 due**

Fri 9/22 Presidential Power

**Read:** Levinson, Ch. 9

Mon 9/25 An Independent Judiciary?

**Read:** Levinson, Ch. 12

Wed 9/27 Judicial Review.

**Read:** Levinson, Ch. 13

Fri 9/29 Constitutions and Emergencies.

**Read:** Levinson, Ch. 16

Mon 10/2 Debating the Nineteenth Amendment (or, Should Women be Given the Right to Vote?).

**Read:** Moodle assignment

Wed 10/4 Debating the Equal Rights Amendment.

**Read:** Moodle assignment

**Short writing assignment #5 due (complete worksheet)**

Fri 10/6 What Does the Fourth Amendment Protect? *Olmstead v. United States* (1928). **Read:** Moodle assignment

Mon 10/9 What *Else* Does the Fourth Amendment Protect? *United States v. Jones* (2012)

**Read:** Moodle assignment.

Wed 10/11 The Fourth Amendment and DNA: *Maryland v. King* (2013)

**Read:** moodle assignment

Fri 10/13 Debating the Balanced Budget Amendment

**Mid-term Project Due**.

Mon 10/16 Fall Break. No Class.

Wed 10/18 Does the Eighth Amendment Contain a “Proportionality” Principle? *Harmelin v. Michigan* (1991)

**Read:** moodle assignment

Fri 10/20 The Power of Precedent I: *Planed Parenthood v. Casey* (1992)

**Read:** moodle assignment

Mon 10/23 The Power of Precedent II: *Dickerson v. United States* (2010)

**Read:** moodle assignment

Wed 10/25 The Power of Precedent III: flag salutes and voting rights (*West Virginia State Board of Education v. Barnette* [1943] and *Smith v. Allwright* [1944])

**Read:** moodle assignment

Fri 10/27 The Power of Precedent IV: drugs and religious liberty (*Employment Division v. Smith* [1990])

**Read:** moodle assignment

**Short writing assignment #6 due**

**Finalize final project due dates**

Mon 10/30 How (not) to Read the “Contracts Clause”: *Home Building and Loan Association v. Blaisdell* (1934)

**Read:** moodle assignment

Wed 11/1 Why Do Supreme Court Justices Write Concurring Opinions? *Van Orden v. Perry* and *McCreary County (KY) v. ACLU* (2005)

**Read:** moodle assignment

**Short writing assignment #7 due**

Fri 11/3 Balancing the “Scales of Justice”: *New York v. Ferber* (1982) and *Tennessee v. Garner* (1985)

**Read:** moodle assignment

Mon 11/6 Sorting Out “Separation of Powers”: *Zivotofsky v. Kerry* (2015)

**Read:** moodle assignment (Justice Kennedy’s majority opinion and Justice Breyer’s brief concurrence)

Wed 11/8 Does Congress Have the Power to Regulate “Migratory Birds” (and if not, who does)? *Missouri v. Holland* (1920)

**Read:** moodle assignment

Fri 11/10 How Much “Liberty” Does the “Due Process” Clause Protect? *Washington v. Glucksberg* (1997).

**Read:** moodle assignment

Mon 11/13 **Final project presentation #1**

Wed 11/15 No class.

Fri 11/17 No class.

Mon 11/20 **Final project presentation #2**

Wed 11/22 Thanksgiving Break. No class.

Fri 11/24 Thanksgiving Break. No class.

Mon 11/27 **Final project presentation #3**

Wed 11/29 **Final project presentation #4**

Fri 12/1 **Final project presentation #5**

Mon 12/4 **Final project presentation #6**

Wed 12/6 **Final project presentation #7**

Final exam will be held on Friday Dec. 15 at 8am. Final exam take home essays due by 10am on 12/15.