POLITICAL SCIENCE 5130
LAW AND POLICY

Fall 2018
Monday: 2:30 - 5:20
MAIN 318
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Office Hours
Mon. 8:30 – 10:00, Wed. 8:30-10:00, & by appointment
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Course Objectives

This course analyses the relationship between law and policy. It begins with an examination of the political economy of the American founding and the legal regime that emerged from this seminal period. What were the issues that confronted the founders in the late 1700s and how did the founders address the relationship between the emerging commercial society at the turn of the nineteenth century and questions of American republicanism? How was the political economy of the founding era reflected in the Constitution and its interpretation in the years immediately after its ratification?

In Part 2 of the course we investigate the relationship between law, liberty, and markets. Here our focus will be Friedrich Hayek’s The Constitution of Liberty. What do we understand by the word “liberty”? What forms of liberty are there, what rights should government protect, and what sort of political and legal regimes best promote liberty and preserve individual rights? Is the progress and civilization of free societies due merely to their accumulation of wealth and capital or also, as Hayek suggests, to their better utilization of knowledge?

Part 3 reviews Cass Sunstein’s defense of the modern regulatory state. What arguments does Sunstein make in support of the regulatory state and the rights revolution of the late twentieth century? Is government regulation necessary to compensate for market dysfunctions and inequalities of economic power? Or does such regulation simply serve to create further market distortions and inequalities of political power? How can we explain the growth of American government and the emergence of the rights revolution over the last half century? Was the latter imposed from the top down by legal and political elites or did it have a more popular basis, the product of a majoritarian consensus on the need for legal and political reform?

Part 4 provides a case study on law, national security, and American business during World War II. Here we examine Arthur Herman’s Freedom’s Forge: How American Business Produced Victory in World War II. We will investigate the relationship between the business community and the federal government in producing the arms and other materiel necessary for allied victory in the Second World War. Part 4 of the course provides a segue to Part 5 and the relationship between the Constitution and civil-military relations in the United States. What has been the modern theory of civil-military relations and how did it evolve from the time of the Constitution’s ratification?
through World War II? Why is this development so crucial to American constitutionalism and the conduct of war today?

Part 6 of the course focuses on more recent national security policy, specifically the problem of law and terrorism. Reviewing Jack Goldsmith’s *The Terror Presidency: Law and Judgment Inside the Bush Administration*, some of the questions we will ask are: How have law and executive war powers developed over time? More specifically, how did the events of 9/11 and afterwards affect presidential war powers? Did President Bush disregard the Constitution, as his critics contend, or was his administration, to the contrary, ensnared in a labyrinth of international and domestic legal regulations that themselves threatened national security? What happens when lawyers and courts make terrorism policy? Did the Obama Administration act much differently than the Bush Administration on the fundamental issues involving national security?

The course concludes with a brief investigation of the law of self-defense, specifically the Second Amendment of the Constitution. Here we will examine the Supreme Court’s landmark ruling in *District of Columbia v. Heller* (2008).

This class will be conducted as a seminar. We do A LOT OF READING. If you are NOT prepared to do the reading, DO NOT TAKE THIS CLASS. It will be virtually impossible to receive an "A" in this course if you do not keep up with the readings and come to class prepared to discuss them. Mere attendance is insufficient to garner a good grade.

PLEASE NOTE THAT IF YOU PLAGIARIZE OR CHEAT ON ANY EXAM OR ASSIGNMENT, YOU WILL RECEIVE AN “F” IN THE COURSE. I WILL NOT ACCEPT ANY EXCUSES FOR PLAGIARISM OR CHEATING.

COURSE REQUIREMENTS

Required Texts:


There are additional readings referred to in the syllabus as “Electronic” that will be emailed to students registered for the course. Please make sure you are registered for the course.

You must keep up with all of the readings and attend and participate in all classes. IF YOU MISS MORE THAN ONE CLASS, YOUR GRADE MAY BE REDUCED BY 10 POINTS OUT OF 100. FOR EVERY ADDITIONAL CLASS MISSED, YOUR GRADE MAY BE REDUCED EVEN MORE. DON’T MISS CLASSES.

Grade Distribution:

- (1) Mid-Term Exam = 35%
- (2) Final Take-Home Exam = 50%
- (3) Class Presentations and Participation = 15%

TOTAL = 100%

FAILURE TO COMPLETE ANY OF THE ABOVE GRADING COMPONENTS WILL RESULT IN AN F GRADE FOR THE COURSE.

(1) The MID-TERM EXAM will be held in class MONDAY, OCTOBER 15, FROM 2:30-3:45. IT WILL COVER EVERYTHING WE HAVE COMPLETED UP UNTIL THE END OF CLASS MONDAY, OCTOBER 8. The format for the exam will be two essay questions. You will be asked to summarize and comment upon issues, readings, and lectures addressed up until the time of the exam. You will be graded on how well you answer the questions as well as on how well you integrate the readings and lecture materials into your answers. NO MAKE-UP EXAMS OR REWRITES WILL BE ALLOWED. IF YOU CANNOT ATTEND THIS EXAM, DO NOT TAKE THIS CLASS.

(2) The FINAL TAKE-HOME EXAM will be handed out at the beginning of class on MONDAY, NOVEMBER 26. You will once again be asked to summarize and comment upon issues, readings, and lectures addressed up until the time of the exam. This exam will consist of three essay questions. Your answers cannot exceed 4 PAGES PER QUESTION for UNDERGRADUATES (TOTAL 12 PAGES, double-spaced, typed, 12 point font or larger, with page numbers included in the text) or FIVE PAGES PER QUESTION for GRADUATE STUDENTS (TOTAL 15 PAGES, double-spaced, typed, 12 point font or larger, with page numbers included in the text). This page limit is STRICT. The final exam will include all material covered in the course, with an emphasis on material covered since the mid-term exam. The exam must be returned to me at the BEGINNING OF CLASS, MONDAY, DECEMBER 3. NO EXTENSIONS WILL BE GRANTED. It is also imperative at this level that your take-home exam be WELL ORGANIZED, WELL THOUGHT OUT, AND VERY WELL WRITTEN. If I have to struggle to read your exam answers, you will not receive a good grade. Also, DO NOT EMAIL ME YOUR EXAM. You must bring a hard copy of the exam to class Monday, December 3.
CLASS PRESENTATIONS AND PARTICIPATION. You will be assessed for your participation in class discussion. Part—and only part—of that assessment will consist of your presentations in class. For those presentations, two students will be selected to provide comments on each of the readings on the syllabus. (Longer readings, such as books, will be broken down into a variety of segments consisting of a few chapters each.) The first student presenting will outline the reading. The second student presenting will critique the reading. There is no written requirement for the presentations. Students doing the outlines will be limited to 5 minutes. Students doing critiques will be limited to 2 minutes. For each class, you must do all of the required readings. I will call on students to discuss the readings in every class, not just those who do the presentations. Please be prepared.

COURSE OUTLINE (ALL READINGS ARE REQUIRED READINGS)

INTRODUCTION (Aug. 27)

No readings

NO CLASS SEPTEMBER 3—LABOR DAY

   A. The Problem of Commerce and Republicanism During the Founding Era
      McCoy, _The Elusive Republic_, Introduction and Chs. 1 - 5
   B. Jeffersonian Versus Hamiltonian Commercial Republicanism
      McCoy, _The Elusive Republic_, Chs. 6 - 10
      Michael Chan, Ch. 6, “Commerce, Virtue, and the American Way of Life,” from _Aristotle and Hamilton on Commerce and Statesmanship_ (Electronic)
      Hiram Caton, “The Formation and Reformation of Government (United States),” from _The Politics of Progress_ (Electronic)

2. LAW, LIBERTY, AND CIVILIZATION (Sept. 24 – Oct. 1)
   A. Freedom, Civilization, and Progress
      Hayek, _The Constitution of Liberty_, Intro. and Chs. 1-3
   B. Liberty, Reason, and Responsibility
      Hayek, _The Constitution of Liberty_, Chs. 4-5
C. Equality, Distributive Justice, and Majority Rule

Hayek, *The Constitution of Liberty*, Chs. 6-8

D. The Rule of Law and American Constitutionalism

Hayek, *The Constitution of Liberty*, Chs. 11-12

3. DEFENDING THE MODERN REGULATORY STATE (Oct. 8)

Cass R. Sunstein, Preface, Introduction, and Ch. 1, “Why Regulation?” from *After the Rights Revolution* (Electronic)

The mid-term exam will be held from 2:30 - 3:45, Monday, October 15. It will cover everything we have completed up until the end of class Monday, October 8.

4. LAW, NATIONAL SECURITY, AND AMERICAN BUSINESS (Oct. 22 – Oct. 29)

Herman, *Freedom’s Forge*, entirety

5. THE CONSTITUTION AND CIVIL-MILITARY RELATIONS (Nov. 5 – 12)

A. The Rise of the Military Profession and the Theory of Civil-Military Relations

Huntington, *The Soldier and the State*, Intro., Chs. 1, 2, 4

B. Military Power, the Constitution, and the Military Profession

Huntington, *The Soldier and the State*, Chs. 6, 7, 9

C. Law and American Civil-Military Relations During World War II

Huntington, *The Soldier and the State*, Ch. 12

6. LAW AND THE WAR ON TERROR (Nov. 19 – Nov. 26)

Jack Goldsmith, *The Terror Presidency*, entirety

7. SELF-DEFENSE AND THE SECOND AMENDMENT (Nov. 26 cont’d)


The final take-home exam will be handed out in class Monday, November 26. The exam must be returned to me at the beginning of class Monday, December 3. The concluding lecture that day will end the course.