

The 2016 Presidential Election and the Rule of Law

Description:

The United States is one of the oldest presidential democracies in the world. The rhetoric around the upcoming Presidential election reflects fear that our government may not hew to the rule of law.

This reading group will discuss what the rule of law means both in theory and in practice, particularly with respect to the executive branch. We'll discuss the 2016 Presidential election and explore the source and limits of the executive's power, taking into consideration how current events may influence the power deemed necessary to maintain order and security.

Meeting Schedule:

Session 1: Monday, September 12th, 5-7pm in Lewis 202

Session 2: Monday, October 3rd, 5-7pm in Hauser 103

Session 3: Monday, October 24th, 5-7pm in Hauser 103

Session 4: Tuesday, November 1st, 5-7pm in Hauser 103

Day 1: What is the rule of law?

- Ronald Cass, *The Rule of Law in America*, xi-45 (2001).
 - Introduction and Chapters 1-3.
- John Orth, *The Rule of Law*, 19 Green Bag 2d 175 (2016)
http://www.greenbag.org/v19n2/v19n2_articles_orth.pdf.
- Article II of the U.S. Constitution: <https://www.law.cornell.edu/constitution/articleii>
- Jennifer L Weber, *Was Lincoln a Tyrant?*, The N.Y. Times (March 25, 2013),
<http://opinionator.blogs.nytimes.com/2013/03/25/was-lincoln-a-tyrant/>.
- Abraham Lincoln, *Letter to Erastus Corning and Others* (June 12, 1863)
<http://www.abrahamlincolnonline.org/lincoln/speeches/corning.htm>.
- *Marbury v. Madison* intro video: <https://www.youtube.com/watch?v=KwciUVLdSPk>

Day 2: The Threat of Authoritarianism to Democracy

- Bob Altemeyer, *The Authoritarians* (2006),
<http://members.shaw.ca/jeanaltmeyer/drbob/TheAuthoritarians.pdf>.
 - Introduction, Chapter 1 and 5.
- Roberto Stefan Foa and Yascha Mounk, *The Democratic Disconnect*, The Danger of Deconsolidation Vol. 27, No. 3 (July 2016), pp. 5-17
<http://www.journalofdemocracy.org/sites/default/files/Foa%26Mounk-27-3.pdf>.
- Trump and the Rule of Law: Does Trump acknowledge the rule of law?
 - Adam Liptak, *Donald Trump Could Threaten U.S. Rule of Law, Scholars Say*, The N.Y. Times (June 3, 2016),

<http://www.nytimes.com/2016/06/04/us/politics/donald-trump-constitution-power.html>.

- Wendy Rahn and Eric Oliver, *Trump's voters aren't authoritarians, new research says. So what are they?*, The Washington Post (March 9, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/09/trumps-voters-arent-authoritarians-new-research-says-so-what-are-they/>

Day 3: Congressional Intransigence and Presidential Power

- Congressional Intransigence:
 - Binyamin Appelbaum and Michael D. Shear, *Once Skeptical of Executive Power, Obama Has Come to Embrace It*, The N.Y. Times (August 13, 2016), <http://www.nytimes.com/2016/08/14/us/politics/obama-era-legacy-regulation.html?action=click&contentCollection=Politics&module=RelatedCoverage®ion=EndOfArticle&pgtype=article>.
 - Adam Liptak and Michael D. Shear, *Supreme Court Tie Blocks Obama Immigration Plan*, The N.Y. Times (June 23, 2016), http://www.nytimes.com/2016/06/24/us/supreme-court-immigration-obama-dapa.html?_r=0.
- DAPA and DACA:
 - United States v. Texas fifth circuit opinion: <http://www.scotusblog.com/wp-content/uploads/2015/11/15-40238-CV0.pdf>
 - Read Part 1, A & B.
- Prosecutorial Discretion:
 - Michael Kagan, *Binding the Enforcers: The Administrative Law Struggle Behind President Obama's Immigration Actions*, 50 University of Richmond Law Rev. 665 (2016), <http://lawreview.richmond.edu/wp/wp-content/uploads/2016/02/Kagan-502.pdf>.
 - Read pages 1-31.
- Hillary Clinton's pledge to continue Obama's policies:
 - Chris Wallace interview with Hillary Clinton: <https://www.youtube.com/watch?v=umvk8MyvD7Y>
 - Watch (6:00min - 11:00min)
 - Raymond A. Smith, *Hillary Clinton Will Be Barack Obama's Third Term*, The Daily Beast (July 6, 2016), <https://perma.cc/Y4QC-42N2>.
 - Russell Berman, *What the U.S. Supreme Court Immigration Ruling Means for Hillary Clinton*, The Atlantic (June 23, 2016), <https://perma.cc/75TM-9TFT>.

Day 4: The Unitary Executive

- Inspector General's report on the president's surveillance program (July 2009): <https://fas.org/irp/eprint/psp.pdf>
 - Read Parts II and IV.

- John Yoo's memo for Alberto R. Gonzales, counsel to the President, *Authority for Use of Military Force to Combat Terrorist Activities Within the United States* (October 23, 2001): <https://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memomilitaryforcecombatus10232001.pdf>.
 - Read introduction (pages 1-2) and Parts IV-VI (pages 15-37).
- Memo in response from Stephen Bradbury, Deputy Assistant Attorney General to John Yoo's October 23rd memo, *Re: October 23, 2001 OLC Opinion Addressing Domestic Use of Military Force to Combat Terrorist Activities* (October 6, 2008), <http://nsarchive.gwu.edu/torturingdemocracy/documents/20081006.pdf>.
- Cass R. Sunstein & Lawrence Lessig, *The President and the Administration*, 94 *Columbia Law Review* 1 (1994), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=11680&context=journal_articles.
 - Read Introduction, pages 2-11, and Part III.
- Richard Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency* (2006).
 - Read Chapter 2, "How Does National Security Shape Constitutional Rights?"

H2o playlist: <https://h2o.law.harvard.edu/playlists/50978>