

Constitutional Law I
Political Science 415
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What does the Constitution mean? This sounds like a simple question with a simple answer, but for every simple question there is usually a simple answer that is inevitably wrong. For example, Article I of the Constitution gives Congress the power to declare war but Article II makes the president the commander-in-chief but what is the current conflict in Afghanistan and Iraq? Who should determine when troops come home, who should control who is and is not an enemy combatant and whose telephones can be wiretapped without a warrant? In other words, where does the congressional war power and the commander-in-chief power begin and end? Once you begin to answer these questions, the Constitution becomes a bit murkier. Moreover, the answers you find will have significant political/social/economic consequences regarding the power of the two branches, foreign policy, the fight against terrorism, and the US's place in the world. And this just takes into account the war power. What is commerce is just as tricky? Is it production, distribution, a combination, or something else?

These questions of what the Constitution means in respect to governmental powers and structure and how the court comes to these conclusions is the main focus of this course. Consequently, this course is an examination of constitutional interpretation and development in the US with emphasis on the role of the US Supreme Court in the American system of government. Though this is an upper division course, it is impossible to present a comprehensive review of constitutional law in two semesters, much less one. However, I will try to give you a good idea about the political process of constitutional lawmaking, introduce general principles, and address the central theoretical concerns facing those who study and watch the courts.

The first semester of this sequence focuses on the distribution of power and authority among actors in the American political system, more specifically the system of separation of powers and federalism. We tend to think of the Supreme Court and the Constitution primarily in terms of civil and individual rights. However, for most of its history, the Court focused almost exclusively on questions of structure and process in American government. Many of the framers saw the structure of government as the central protection of rights against governmental action. Moreover, recent power struggles between President, Congress, and the Courts illustrate the continued vitality of these fundamental questions. For example, after a 140 year hiatus, the Supreme Court has recently remembered that the US is federal system and that federalism limits the national government's authority. Using their doctrines of federalism, they are striking down laws and limiting the power of the federal government to combat violence against women, guns around schools, and the manner in which states treat its employees.

Requirements

This course uses a combination of case, historical, and political analysis and materials. Court cases, legislation, and executive orders are the primary source materials of constitutional lawmaking. This material allows you to evaluate first-hand the theory and practice underlying constitutional principles. At first, cases are difficult to read. The workload might seem burdensome in the first weeks, but we will spend time working closely with the text so that you can learn how to analyze cases. By the end of the course, you will understand better the nature of our constitutional system and have the background necessary for further inquiry. Most of the material is found in the following textbook available at the Lifeway Bookstore. I will also supplement these readings with cases from the most recent Supreme Court terms. These cases are available at findlaw.com.

O'Brien, David. 2011. *Constitutional Law and Politics: Struggle for Power and Governmental Accountability*, 8th ed. NY: Norton.

Grading. Your grade for this course will come from three exams, your legal brief and oral presentation, and your participation. The dates for the exams are listed on the syllabus so make sure that you have plans to attend those days. I do not give make-ups unless you have a university-authorized excuse. Failure to take an exam means that your final will count twice. Moreover, when and/or if I curve test or final grades, I reserve the right to withhold the curve from students who never attend class.

Once grades are returned, you must wait 24 hours before discussing a grade with me. This serves as a time for you to cool off and to determine what you may have done wrong. After this time, I will sit down with each of you and discuss what you did wrong and how you can improve over the remainder of the semester. This is not a chance to lobby me for a higher grade or tell me what you meant to say. It is a simple pedagogical tool to improve your skills. However, if I make a mistake, I will rectify that.

As with all of my classes, if you make substantial improvement over the course of the semester, I am willing to forget your earlier grades. Learning is a process and it is more important what you know at the end than what you know at the beginning. Hopefully, this class will improve your analytical and communication skills so that you become a successful attorney or something else equally fulfilling.

Participation. It is absolutely essential for you to study these materials carefully. The approach in this course is interactive and interrogatory. You will be expected to participate actively in a dialogue as I lecture infrequently. In this respect, I will treat this class much like law school to familiarize you with some of their practices. There, the professors do not tolerate a lack of preparation and non-participation. Neither will I. Therefore, you will get three passes (I am not prepared). On the third "I am not prepared" and for every two after that, your grade will drop one letter grade. In determining "I am not prepared," it can be as simple as you saying that or it will be my determination by your fumbling and obvious unfamiliarity with the case.

Legal Brief. An important part of a legal career is communicating your ideas to others: clients, colleagues, members of the judicial system. To aid you in this endeavor, each individual will be required to write a brief and argue your case before a three-judge panel at the end of the semester. In October, individuals will sign up for different cases that they wish to argue. Students will then write a brief that identifies the legal question(s), cites the appropriate authorities, presents your arguments, and refutes your opponent's arguments. I will present more detailed information concerning the formatting and content at a later date. Briefs will be due in November. Oral arguments will take place after Thanksgiving. Each side for each case will have 15 minutes to present his or her case to the judicial panel. During this time, the court may let you talk non-stop or, more likely, will pepper you with questions.

Extracurricular: Students are expected to attend Union Pre-Law Society meetings, the Constitution Day event, and other political science activities.

Cheating: Don't do it. Anyone caught cheating will receive an automatic F for the course and will be referred to the appropriate authorities for punishment.

Communication Devices: Please turn off all cell phones and other portable electronic devices while in my class. Your life is not so important that you need to answer the phone or text your friend immediately. If found using any such device, I reserve the right to answer the phone and/or read your text message to the class. Moreover, I will confiscate your communication device until the next class meeting. Therefore, if you have an emergency necessitating having the communication device on, please let me know before the class.

Audio/Video Recording: No audio or video recording of classroom activity is permitted without my prior approval. This prohibition includes cellphone camera functions, laptop audio or video functions, and all other digital or analog recording equipment.

Lap top computers: Students are welcome to use lap top computers in my class as long as they are not a distraction to the user or others (e.g., noise, email, internet use not connected to the course, playing games) and it does not create a hazard to others (e.g., extension cord in the aisle).

Special Needs: Students with disabilities who may need academic accommodations should discuss options with the instructor the first week of class.

The Syllabus: I reserve the right and prerogative to modify the syllabus in accordance with student and professorial needs. The syllabus should not be construed as a contract.

Class Outline

Aug. 24 Introduction

Aug. 26 Interpreting the Constitution
Ch. 1B

Aug. 29 Judicial Decision Making
Handout

Aug. 31 SCOTUS Process
Ch. 2B-2H

Sept. 2 Briefing Cases
OBrien pp. 1083-6 & Handout

Sept. 5 Labor Day – no class

Sept. 7 The Judiciary
Ch. 1A, 2A

Sept. 9 The Judiciary
Ch. 2A

Sept. 12 The Judiciary
Ch. 2I

Sept. 14 The President and Foreign Policy
Ch. 3

Sept. 16 The President and Foreign Policy
Ch. 3

Sept. 19 The President and Domestic Affairs
Ch. 4A-B

Sept. 21 The President and Domestic Affairs
Ch. 4C-D

Sept. 23 The President and Domestic Affairs
Ch. 4D

Sept. 26 Catch-up

Sept. 28 First Midterm

Sept. 30 Congress: Immunities, Membership, and Investigatory Powers
Ch. 5

Oct. 3 First Monday

Oct. 5 /Congress: Immunities, Membership, and Investigatory Powers
Ch. 5

Oct. 7 Congress: Legislative Powers
Ch. 6A-B

Choose a case to brief and argue

Oct. 10 Congress: Legislative Powers
Ch. 6C

Oct. 12 Congress: Legislative Powers
Ch. 6C

Oct. 13-17 Fall Break

Oct. 19 Congress: Taxing and Spending Powers
Ch. 6D

Oct. 21 Federalism
Ch. 7A

Oct. 24 Federalism
Ch. 7B

Oct. 26 Federalism
Ch. 7C-D

Oct. 28 Catch-up

Oct. 31 Second Midterm

Nov. 2 Reapportionment
Ch. 8A-B

Nov. 4 Campaigns
Ch. 8C

Nov. 7 Campaigns
Ch. 8C

Legal Brief Due

Nov. 9 Contract Clause
Ch. 9A

Nov. 11 Demise of Liberty of Contract
Ch. 9B

Nov. 14 Demise of Liberty of Contract
Ch. 9B

Nov. 16 Takings Clause
CH. 9C

Nov. 18 Catch up

Nov. 21 Final

Nov. 25-27 Thanksgiving

Nov. 28-Dec. 2 Oral Arguments