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Office Hours:
Tues: 12:15-1:15, 4-5:30
Thurs: 9:30-10:30 am
or by appointment
Fall 2006

Political Science 5211: Constitutional Law
Tues/Thurs, 10:45 am-12:05 am, MBH 111

Course Objectives

Over the past 200 years, the Supreme Court has engaged in a continuing debate over the meaning of the U.S. Constitution. In this course, we will examine the Court's attempts to apply the Constitution to the modern state that has evolved to respond to the increasing complexity of American political, economic, and social life. In particular, we will examine the Court's expanding role in determining the powers and limitations of the nation's political institutions, the powers of the states, and the right to representation through the electoral process.

The course begins with a review of the powers of the federal judiciary, the limitations that are placed upon it by the constitutional system, and the Supreme Court's own self-imposed restrictions. We will then consider the distribution of power within the national government, especially the privileges and powers of Congress and the Presidency. A major portion of the course will involve an evaluation of the expansion of federal power in an increasingly interconnected national economy, the Court's new movement to limit, and possibly reverse, that expansion, and the states' continuing attempts to regulate commerce. We will conclude by examining the effect of constitutional requirements on representation and the regulation of elections and campaign finance.

As we read the Court's decisions, we will closely analyze the Court's reasoning as a process of argumentation, and note the continuities and inconsistencies of constitutional argument over time and across issues. Students will learn how to read legal cases, identify legal issues, and apply legal forms of reasoning, as well as gaining substantive knowledge of the Constitution and its interpretation. We will place the Court's decisions in their political and historical context, and examine their effect on American politics.

Course Requirements and Methods of Evaluation

There will be a **midterm exam** and a **final exam**. The midterm will include multiple choice, short answer, and essay questions. In addition to the cases and doctrines we have covered, the multiple choice portion will include questions on the Court as an institution. The final exam will have the same format, but will cover doctrine and cases only. **Please bring a blue book to both of these exams.** There will also be a **multiple choice test on the U.S. Constitution** which you will have two opportunities to take; only the higher grade will be recorded. The questions on this test are quite detailed, and you are encouraged to study the text of the Constitution with an eye toward its fine points. You are required to know the numbers of the Constitution's amendments.

During the course of the semester (after approximately the third week), I will provide you with a series of **hypothetical cases** for which you will be required to write two "**decision memoranda**"; you may write a third and have the lowest grade dropped. Each assignment will be made for a period of one week; at the end of the week, the assignment will "time out" and you may only submit the new assignment assigned for the next week. The purpose of these assignments is to improve your writing and analytical skills; I will grade on the basis of writing and analysis as much as description. [A sheet detailing the proper form of these memoranda is attached to the syllabus.](#) While your first and second memoranda must be submitted by the dates listed on the syllabus, the due date for each specific memorandum will be listed on the assignment itself.

You are required to read the assigned cases and other readings before the class session for which they are assigned. I will post regular study sheets on the class [Web Resource page](#) – these sheets are not comprehensive, but are meant to direct and supplement your preparation for class and exams; I may add other appropriate material to this page as well. You will find that it is in your best interest to carefully outline and "[brief](#)" (see attachment) each of the cases before the class meeting so that we may begin our discussions where the judicial opinions conclude. Much of our work in class will involve the case method, and **I reserve the right to call upon any of you to explain the ruling in an assigned case at any time.** Preparation is therefore highly recommended. **Attendance is mandatory.** I will circulate a seating chart during our second meeting. Conformance with the seating chart is required. If you arrive late for class, you will be marked absent.

Your grade will be computed as follows:

Classroom Participation	20%	Date or Date Due
Constitution Test (higher score)	10%	September 14, September 26
Memorandum 1	15%	<i>Must be received by October 26</i>
Memorandum 2	15%	<i>Must be received by November 21</i>
Midterm	20%	October 17
Final Exam	20%	Dec. 15 at 10:30 am

Required Materials: We will primarily use David O'Brien, *Constitutional Law and Politics* Vol. I (Norton, 6th Ed., 2005), hereafter *CLP*. We will also be using the 2006 supplement to Sullivan & Gunther, *Constitutional Law* (Foundation Press, 2006); assigned cases are marked "Supp." **Please bring the relevant casebook (and supplement if assigned) to every class.** You are required to have read *CLP*, Chap. 2 § B-I before the midterm exam; you should read other chapters as assigned. Several additional readings are on Reserve or available through the Web version of this syllabus and are so designated. I will post regular "handouts" with terms, case summaries and other information on my website; please check this site every week. You are responsible for all readings; case names within assignments are only those which we will review in class.

Non-negotiable Policy on Late Papers and Unsubmitted Work: Papers will be accepted until 5 pm on the date due. I will lower a paper grade one full grade if you submit a paper due on a date for which you have an unexcused absence. Late papers will lose one full grade if submitted within a week of due date; after a week, papers will not be accepted. **Failure to submit any assignment during the semester will result in failure of the entire course.**

Submission of Papers to Turnitin.com: Memorandum must be submitted both in hard copy and through turnitin.com; instructions for submitting work through turnitin.com will be provided with the first assignment.

Academic Misconduct: All quotes must be cited as such and include a clear reference to the work from which they were drawn; they will otherwise be treated as plagiarism. All use of materials other than course materials must be accompanied by full citations. All work in this course is assigned as individual work; working as groups or teams is strongly discouraged (and may be treated as cheating), as is all but the most casual assistance from others; this includes spouses and other family members. If you intend to submit a paper which significantly draws upon work for another class, you must first receive explicit permission to do so from both myself and the other instructor. **Any form of academic dishonesty will result in a failing grade for the course and other disciplinary action, up to expulsion from the University.**

Americans with Disabilities Act Notice: Persons with disabilities requiring special accommodations to meet the expectations of this course should provide reasonable prior notice to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD) to make arrangements. Written material in this course can be made available in alternative format with prior notification.

Accommodation of Sincerely Held Beliefs: I will work with students who require schedule changes due to religious or other significant obligations. I will not consider any requests based on course content. Because modern American politics includes many debates over sexuality, obscenity, religious practice and belief, and political ideology, any class that did not address such issues would be substantially limited. Students are required to attend all classes and to read all assignments. All assignments and lectures are related to our subject matter, and I do not include gratuitously salacious material. If you have any objection to the frank and open discussion of any of the topics above, including the use of adult language when appropriate to subject matter, please drop the class.

Schedule of Classes and Assignments

Please note that I may add additional materials, please watch the [Web Resource page](#)

August 24 - Introduction to Course

Study for Constitution Test, *CLP*, 1; familiarize yourself with terms in *CLP*, Glossary, 1049. Familiarize yourself with Supreme Court process in *CLP*, Chap. 2, § B-I.

August 29, 31 - Judicial Review

CLP, Chap. 1, § A - *Marbury v. Madison*, *Eakin v. Raub*

Aug 31, Sept. 5 - Theories of Constitutional Interpretation

CLP, Chap. 1, § B

Web: Brennan, "[Contemporary Ratification](#)"; Scalia, "[Originalism: The Lesser Evil](#)"; Marshall, "[Reflections on the Bicentennial of the United States Constitution](#)"; Meese, "[The Law of the Constitution](#)"; Posner, "[What am I, a Potted Plant?](#)"

Sept. 7, 12 - Judicial Federalism -

CLP, Chap. 7, § C, D - *Martin v. Hunter's Lessee*, *Cooper v. Aaron*, *Younger v. Harris*, *Michigan v. Long*, *People v. PJ Video*; *Jaffree v. Bd of School Commissioners*, *CLP*, 206; *KY v. Wasson*, *CLP*, 210.

Sept. 14 - Constitution Test - First Attempt

Sept. 14, 19 - Jurisdiction, Standing, and Justiciability

CLP, Chap. 2, § A

Standing: *Frothingham v. Mellon*, *Flast v. Cohen*, *Valley Forge Coll. v. Americans United*, *Lujan v. Defenders of Wildlife*, *Elk Grove Unified School Dist. v. Newdow*

Justiciability and Political Questions: *Baker v. Carr*, *Goldwater v. Carter*

Sept. 26 - Constitution Test - Second Attempt

Sept. 21, 26 - Presidential Power over Foreign Affairs

CLP, Chap. 3, § B, C - *US v. Curtiss-Wright Export Corp.*, *Dames & Moore v. Regan*, *Sale v. Haitian Centers Council*, *Missouri v. Holland*, *U.S. v. Pink*, *U.S. v. Alvarez-Machain*; The War Powers Resolution, p. 302

Web: [Dellums v. Bush](#)

Sept. 28, Oct. 3 - Presidential Power in an Emergency

CLP, Chap. 3, § D & Chap. 4, § A - *The Prize Cases*, *Ex Parte Milligan*, *Korematsu v. U.S.*, *Rasul v. Bush*, *Hamdi v. Rumsfeld*, *Youngstown Sheet & Tube v. Sawyer*, *New York Times v. US Supp.*: *Hamdan v. Rumsfeld*, p. 17; Web: [Hamdan Chart](#)

Oct. 5 – Fall Break

Oct. 10 - Congressional Privilege and Executive Privilege

CLP, Chap. 5, § A - *Gravel v. US*, *Eastland v. U.S. Serviceman's Fund*, *Hutchinson v. Proxmire*; CLP, Chap. 4, § D - *US v. Nixon*, *Clinton v. Jones*

Oct. 12- Legislative Investigations

CLP, Chap. 5, § B - *Watkins v. US*, *Barenblatt v. US*, *Gibson v. Florida*

Oct. 17 – Midterm Exam - Bring Blue Book - includes material from CLP, Ch. 2, § B-I.

Oct. 19, 24 - Congressional Power and Delegation

CLP, Chap. 4, § C - *Chevron v. NRDC*, *Schechter Poultry v. US*, *Industrial Union Dept. v. American Petroleum Institute*, *INS v. Chadha*, *Clinton v. City of New York*; *McCulloch v. Maryland*, CLP, 527.

Oct. 26 - The Appointment Power

CLP, Chap. 4, § B - *Myers v. US*, *Humphrey's Executor v. US*, *Bowsher v. Synar*, *Morrison v. Olson*

Oct. 26 - First decision memorandum due if not already submitted.

Oct. 31 - The Early Commerce Clause

CLP, Chap. 6, § A - *Gibbons v. Ogden*; CLP, Chap. 6, § B, *U.S. v. E.C. Knight*, *Swift & Co. v. U.S.*, *The Shreveport Rate Case*, *Hammer v. Dagenhart*, *Carter v. Carter Coal Co.*,

Nov. 2, 7 - The Modern Commerce Clause

CLP, Chap. 6, § C - *NLRB v. Jones & Laughlin Steel Corp.*, *U.S. v. Darby*, *Wickard v. Filburn*, *Heart of Atlanta Motel v. US*, *Katzenbach v. McClung*, *U.S. v. Lopez*, *Reno v. Condon*, *U.S. v. Morrison*

Supp: *Gonzales v. Raich*, p. 1.

Nov. 9 - Taxing and Spending Clause

CLP, Chap. 6, § D - *Pollack v. Farmer's Loan, Steward Machine v. Davis, U.S. v. Kahriger, So. Dakota v. Dole*

Nov. 14 - State Power over Commerce within the Federal System

CLP, Chap. 7, § A - *Cooley v. Bd of Wardens, Southern Pacific v. Arizona, Bibb v. Navajo Freight, Maine v. Taylor, PA v. Nelson*

Supp: *Granholm v. Heald*, p. 14.

Nov. 16 - The Tenth Amendment and State Sovereignty

CLP, Chap. 7, § B - *National League of Cities v. Usery, Garcia v. San Antonio Metro Transit Authority, New York v. U.S., Printz v. U.S./ Mack v.U.S; Term Limits v. Thornton*, p. 468.

Nov. 21 - The Eleventh Amendment:

CLP, Chap. 7, § B - *Seminole Tribe v. Florida, Alden v. Maine, NV Dept v. Hibbs*

Supp.: *Central Virginia Community College v. Katz*, p.13

Nov. 21 - Second decision memorandum due if not already submitted.

Nov. 23 - Thanksgiving

Nov. 28 – The Takings Clause

CLP, Chap. 9, § C – *Hawaii Housing Authority v. Midkiff, Nolan v. California Coastal Commission, Lucas v. South Carolina Coastal Council*

Supp: *Kelo v. New London*, p. 27; *Lingle v. Chevron*, p. 33. **Web:** [Article on Kelo impact](#)

Nov. 30 - Dec. 8 - The Constitution and Representation

Reapportionment:

CLP, Chap. 8, §B - *Wesberry v. Sanders, Reynolds v. Sims, Vieth v. Jubelirer; Baker v. Carr*, p. 145

Supp: *LULAC v. Perry*, p. 38.

Race and Redistricting:

CLP, Ch. 8, §A, B - *SC v. Katzenbach, Gomillion v. Lightfoot, Shaw v. Reno, Hunt v. Cromartie*

Regulating Political Finance

CLP, Chap. 8, § C - *Buckley v. Valeo, FEC v. NCPAC, McConnell v. FEC*

Other Issues in Election Law:

CLP, Chap. 8, § C – *Republican Party v. White, Rutan v. Republican Party, McIntyre v. Ohio Elections Organization*

Supp: *Clingman v. Beaver*, p. 39

A Thing unto Itself: *Bush v. Gore, CLP*, 883.

Final Exam – Fri. Dec. 15. 10:30– 12:00. Bring Blue Book.

Instructions on Memoranda

Over the course of the semester, you must write two memoranda concerning hypothetical cases which I will furnish to you with every topic, generally one a week. You must submit two memoranda before the dates given on the syllabus or your memoranda will be dropped one full grade, and you may submit a third memorandum and drop the lowest grade. In writing the memoranda, you should follow these guidelines:

1) Organization.

- a) Briefly (in one or two paragraphs) recount the significant facts.
- b) Describe the constitutional questions that the case presents. Use only two or three sentences for each question. You may wish to number these questions for easy reference later on. Even if you number the questions, please describe the questions when you answer them.
- c) Answer each of these constitutional questions, providing reasons for how each of these questions should be resolved and referring to relevant cases which we have read, and upon which I have lectured. Announce your decision first and then justify it. Divide your answers into sections which respond to the particular constitutional questions which you have noted. Arrange your answers so that they logically follow each other; in most cases, how you answer one question will determine how the others are properly answered.
- d) Justify your answers by first announcing your decision in regard to each question and providing the central point of your argument ("The President's decision to disregard the War Powers Act is clearly unconstitutional because of Congress's power to make laws governing the Armed Forces.") Then review the history of precedents which back up your argument ("In *Smith v. Jones*, the Supreme Court found that Congress cannot delegate its law making responsibilities to the President. In that case, it said 'blah, blah'"). Then demonstrate why this precedent provides the proper rule, or why another does not ("As in *Smith*, the President does not rely on a specific statute . . . Unlike *Johnson*, the act is not pursuant to a treaty obligation"). Then move on to the next issue.

2) Approach.

- a) Assume that you are a law clerk, arguing before your judicial employer about how a case should turn out. Your reasoning justifying the decision is the most important part of your work. You are NOT the judge, and certainly are not the entire Supreme Court, so do not create new law previously unknown to the constitutional jurisprudence of the United States.
- b) While you are encouraged to have fun with the cases, please do not add facts or make up precedents. Cuteness is its own punishment.

3) Format

a) Papers must be typed, three to four pages, double-spaced, with one inch margin all around. Do NOT exceed four pages. Use black ink and a twelve point (ten characters per inch) or larger font. Violators will be forced to purchase new bifocals for the instructor.

b) Prose must be grammatically correct, with proper usage and attention to style. If you wish to argue persuasively, you must write in language that your reader will easily understand. Proofreading and spell checks are expected; a poorly executed and careless paper displays the author's disrespect for the reader. Such disrespect will be noted.

4) Proper Style (trifles that drive me absolutely raving bananas)

a) Avoid long quotes. However, if you do have a quotation longer than two full lines, please block quote (double indent (one on each side) and single space - like this). Do not place quotation marks at either end of a block quote.

b) Capitalize proper nouns, ie. Congress, First Amendment. Do not capitalize adjectives, ie. congressional, religious. The President has presidential powers.

c) Be aware of the differences between possessives and plurals. "It is" is properly abbreviated "it's," whereas "its" indicates the third person gender neutral possessive. Failure to follow this rule identifies one as less than fully literate. The use of an apostrophe to signal a plural noun is strictly *verboten*. The lack of an apostrophe in a possessive noun will be punished. There/their and that/ which confusion will be disciplined appropriately.

d) Punctuation belonging to a quote belongs inside of the quotation marks. You do not need a comma before all quotations, although it may be appropriate in particular instances (see a grammar text). The use of ellipses (...) to begin or end a quote is discouraged. If you are using parenthetical citation, end the quote, insert the parenthetical citation, and finish with a period. If you are using footnotes, use the period, end quotations marks, then footnote.

e) Thesaurus abusers will be required to enter an appropriate twelve step program. A word is a terrible thing to waste.

f) The ultimate authority for all rules of style is William Strunk, Jr. and E.B. White's *The Elements of Style* (MacMillan, any edition). If you do not own a copy, buy one. Read it while revising your own work. It will serve you well. For a better understanding of grammar, please refer to Margaret Shertzer, *The Elements of Grammar* or to any recent edition of the *Merriam-Webster Collegiate Dictionary*, which contains a section on proper usage. *The MLA Handbook* and the *University of Chicago Manual of Style* are excellent resources for grammatical and stylistic usage.

HOW TO BRIEF A CASE (Adapted from the Casenotes Publishing Website.)

DECIDE ON A FORMAT AND STICK TO IT: Structure is essential to a good brief. It enables you to arrange systematically the related arguments that are scattered throughout most cases, thus making them manageable and understandable. While there are an unlimited number of formats, it is best to find one that suits your needs and stick to it. It is important that a brief contain the following:

TITLE AND VENUE

CONCISE RULE OF LAW: A statement of the general principle of law that the case illustrates. Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is the rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case which directly bear on to the issue. The facts entry should be a short statement of the events that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the “facts” will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion. The facts entry should seldom be longer than five sentences.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a yes or no answer. In reality, the issue is simply the Concise Rule of Law put in the form of a question. The major problem presented in discerning what is the issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as *obiter dictum* or merely *dictum*. While *dicta* may be included later in the brief, it has no place under the issue heading.

To find the issue, the student again asks who wants what and then goes on to ask why did that party succeed or fail in getting it. Once this is determined, the “why” should be turned into a question. Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In capsulizing the reasoning of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry; the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case. You may wish to put this portion of the brief in outline form.

CONCURRING AND DISSENTING OPINIONS: Note the major objections to, and qualifications placed on, the court's opinion. What are the key points of difference? Do you agree with the criticisms expressed? You should very briefly outline the reasoning in the dissents and concurrences.

EFFECT ON PRECEDENTS AND LATER CASES: You should relate how the rule of law discernible from this case compares with that derived from earlier and later cases. Where does this case fit in the series of cases which has shaped the relevant portion of the law?