

POLS 122
CONSTITUTIONAL LAW: GOVERNMENT POWERS
SPRING SEMESTER 2011

Class Schedule: 1:55 – 2:45 M, W, F
Instructor: Professor Lisa M. Holmes
Office: 540 Old Mill
Office Hours: 3:00 – 4:30 Monday and Wednesday, or by appointment
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INTRODUCTION

This course examines one of the two major aspects of American constitutional law: the division of power in our political system (the other major aspect being the declarations of individual rights commonly referred to as civil rights and civil liberties). Governmental power is divided in the United States between the national and state governments - a practice known as federalism. Furthermore, the power within the national government is divided between the three branches of government (the legislative, executive, and judicial branches) through a practice known as separation of powers. The division of authority laid out in the U.S. Constitution has undergone massive interpretation and change throughout American history and it has primarily been the duty of the U.S. Supreme Court to interpret the relevant constitutional clauses.

Historically, the justices on the Court have been far more interested in cases dealing with government powers and only recently has such great attention been paid to issues concerning individual rights such as abortion, gay rights, religion, or rights of the criminally accused. Greater and longer battles have been waged on the Court over federalism, separation of powers, and economic regulation. Also, many of these issues (including executive power in times of war, the government's ability to "take" private property, and Congress' power under the interstate commerce clause) have yet again risen in importance and prominence in recent years, highlighting how societies must constantly deal with questions concerning the basic definition and distribution of government power. Who wields power and how that power is allowed to be exerted is a central concern to any society. That is why the majority of the U.S. Constitution focuses on government powers - and why this information is a necessity for any student of American government.

This course will be conducted according to the traditional case-method study of the law. Students should expect to read and analyze numerous Supreme Court cases to understand legal doctrines established by the justices. Students should understand that the main purpose of this course is to learn, understand and analyze legal doctrines, not to discuss at length personal attitudes and beliefs.

REQUIRED TEXT

- Epstein, Lee and Thomas G. Walker. 2011. *Constitutional Law for a Changing America: Institutional Powers and Constraints*. 7th edition. Washington: CQ Press. I recommend that you bring your book to class every day.

OTHER READINGS

Although the Epstein and Walker text will constitute the vast majority of required readings in this course, recent Supreme Court decisions and other readings may be assigned as the semester progresses. These will either be distributed in class, posted on Blackboard, or obtainable from one of the many good law-related web sites at your disposal, such as:

<http://www.law.cornell.edu>
<http://www.findlaw.com/casecode/supreme.html>
<http://www.supremecourtus.gov>

BLACKBOARD

Copies of the syllabus, the Supreme Court project, and the take-home exams will be posted on Blackboard. I will also make every effort to place short class handouts on Blackboard, so those who miss handouts in class will be able to access them on their own. Any important class announcements, including assigned readings for the week, will be posted on Blackboard as well.

COURSE REQUIREMENTS

Take Home Midterm. A take-home midterm exam will be distributed to the class on Wednesday, February 23rd. The exam will consist of essay questions and will be due **by 2 PM on Wednesday, March 2nd**.

Take Home Final Exam. A take-home final exam will be distributed in class on Wednesday, May 4th. This exam will also consist of essay questions and will be due **by 4:15 PM on Monday, May 9th** (the end of the scheduled final exam period for the course).

Written Briefs. Throughout the semester, each student is required to hand in FIVE written briefs of Supreme Court decisions. Students will need to follow the case briefing format provided in Appendix 8 of your textbook (p. 711). Each student is REQUIRED to submit a brief for the *Marbury v. Madison* (1803) case **in class on Monday, January 24th**. For your remaining four briefs, please adhere to the following policies:

- You may ONLY select cases to brief that are listed as “cases for briefing” on your course schedule (see pages 4-6 of this syllabus).
- Case briefs *must* be submitted during or before the class period in which we are discussing a case. In other words, you cannot hand in a brief after it has been discussed in class, whether you were in class or not.
- No student is permitted to turn in more than one brief in any single calendar week (Monday through Friday) during the course of the semester. You will need to space them out accordingly.

In-Class Quizzes – A number of short quizzes (announced or unannounced) will be given throughout the course of the semester. **Students will NOT be allowed to make up missed quizzes, regardless of the reason why the quiz was missed.** However, each student’s lowest quiz grade for the semester will be dropped. Quizzes will be graded on a scale from -1 to +4. Your average quiz grade (minus the lowest score) will constitute 15% of your final grade. Quizzes will generally cover the class readings for the day, and will typically consist of one open-ended question given at the beginning of the class.

Class Participation. In light of the nature of the course material and the case-method approach to conducting this class, regular attendance and thoughtful participation are expected of each student throughout the semester. Students are expected to come to class prepared and to participate regularly, and the regularity and quality of your individual contributions to class discussion will account for a portion of your final grade. Since you cannot participate if you are not present, regular attendance is a necessity and will be incorporated as a component of your grade. I will take attendance at the beginning of each class. If you miss roll, you will be counted as being absent on that day. I reserve the right to give in-class “pop” quizzes as needed if class preparation and participation do not meet my expectations.

GRADING SCHEME

Final grades will be calculated as follows:

Midterm	25%	Quiz Average	15%
Final Exam	30%	Case Briefs Average	15%
Participation	15%	Total =	100%

A Note on Grading:

An “A” grade given on any assignment or as a final cumulative grade signifies “excellent” work (reserved for those students who have not only demonstrated an excellent understanding of the course material, but who have also shown an excellent ability to analyze the material); a “B” signifies “good” work (a “good” understanding of and ability to analyze the material); a “C” signifies “satisfactory” work (a “satisfactory” understanding of and ability to analyze the material); a “D” signifies “passing” work (a “passing” understanding of and ability to analyze the material); and an “F” signifies “failing” work (an inability to understand or analyze the material).

ACADEMIC HONESTY

Students are, of course, expected to do their own work on all assignments in this class. University standards regarding academic honesty apply throughout the semester. Please see the official university policy at <http://www.uvm.edu/~uvmppg/ppg/student/acadintegrity.pdf>.

CLASSROOM PROTOCOL

The Department of Political Science requires that this classroom protocol, defining minimum standards of conduct, be included in all syllabi of political science classes.

1. Students are expected to attend and be prepared for ALL regularly scheduled classes.
2. Students are expected to arrive on time and stay in class until the class period ends. If a student knows in advance that s/he will need to leave early, s/he should notify the instructor before the class period begins.
3. Students are expected to treat faculty and fellow students with respect. For example, students must not disrupt class by leaving and reentering during class, must not distract class by making noise, and must be attentive to comments being made by the instructors and by peers.

In addition to the above minimum standards, the following policies will apply throughout the semester:

1. For the take-home midterm and final, late papers will be docked $\frac{1}{2}$ letter grade for each 24 hour period (or fraction thereof) that the paper is late. So, a paper that would normally earn a B (an 85), would be dropped to an 80 if it is turned in up to 24 hours late, a 75 if turned in between 24 and 48 hours late, etc. Weekends and holidays ARE incorporated into this calculation. No variation on the computer/printer/hard drive catastrophe excuse will be accepted. You should keep adequate backups of all written work to prevent such a problem.
2. I will only accept paper copies of written assignments. **I will not accept emailed versions.** However, if extenuating circumstances exist, I will allow a student to submit a paper or exam by email if that student is unable to get to campus to hand it in on time. That student would then need to bring a hard copy of the paper to me as soon as possible.
3. If you are a member of a sports team or a UVM organization that requires travel out of town, you must provide me with your schedule as soon as it becomes available. Until I receive your official schedule, no accommodation will be made concerning your class attendance or exam dates due to team travel.
4. Students have the right to practice the religion of their choice. Students with religious observation needs must submit to me in writing their documented religious holiday schedule for the semester by the end of the second full week of classes.
5. If you have a physical or learning disability, please provide me with the relevant paperwork from the ACCESS office by the end of the second full week of classes so we can discuss any relevant accommodations. Discussing these issues early in the semester is necessary to develop a plan that is workable for you and for me. Also, note that I may not be able to accommodate last-minute requests. If your accommodation needs change during the semester, you must inform me of any such changes immediately.
6. All cell phones, iPods, BlackBerries, and other electronic devices **must be turned off and stowed away** for the duration of **each** class session. Any use of these devices in class is distracting and will not be tolerated. Computers are allowed for use in class, **but only for note-taking purposes**. I reserve the right to reduce the final grade of any student who violates these standards.

Feb. 23, 25, 28 Separation of Powers: Presidential Power during War p. 273-321
Cases for briefing: *Ex Parte Milligan (1866)*
Korematsu v. U.S. (1944)
Youngstown Sheet & Tube Co. v. Sawyer (1952)

WEDNESDAY, MARCH 2 TAKE-HOME MIDTERM DUE TO ME (540 OLD MILL) BY 2 PM

PART III: NATION-STATE RELATIONS

Mar. 4 Federalism: Rise of National Supremacy and the Civil War p. 325-345

Mar. 7 – 11 Spring Recess

Mar. 14 Federalism: Dual Federalism and the New Deal p. 345-357
Cases for briefing: *Hammer v. Dagenhart (1918)*

Mar. 16 Federalism: After the New Deal p. 357-371
Cases for briefing: *Printz v. U.S. (1997)*

Mar. 18, 21 The 11th Amendment, New Judicial Federalism, and p. 371-399
Preemption of State Laws
Cases for briefing: *Alden v. Maine (1999)*
Crosby v. National Foreign Trade Council (2000)

Mar. 23 The Commerce Clause: Early Interpretation p. 401-428
Cases for briefing: *Gibbons v. Ogden (1824)*
Schechter Poultry Corp. v. U.S. (1935)

Mar. 25 The Commerce Clause: The Switch in Time p. 428-444, 464-471
Cases for briefing: *Wickard v. Filburn (1942)*
Heart of Atlanta Motel v. U.S. (1964)

Mar. 28, 30 The Commerce Clause: Modern Interpretation p. 445-464
Cases for briefing: *U.S. v. Lopez (1995)*
U.S. v. Morrison (2000)

Friday, April 1 Class cancelled – I will be in Chicago for the Midwest Political Science Conference

Apr. 4 The Commerce Clause and Health Care Reform *Commonwealth of VA v. Sebelius* and
Thomas More Law Center v. Obama (blackboard)

