

**POLS 122**  
**CONSTITUTIONAL LAW: GOVERNMENT POWERS**  
**SPRING SEMESTER 2014**

Class Schedule:	1:55 – 2:45 M, W, F Lafayette L100
Instructor:	Professor Lisa Holmes
Office:	540 Old Mill
Office Hours:	10:00 – 11:30 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 concerns the declarations of individual rights commonly referred to as civil rights and civil liberties. Government power is divided in the United States between the national and state governments in 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, making the issues we'll be covering this semester both foundational and perennial. Debates over government powers predate the writing of the U.S. Constitution, and as well constitute some of the most hotly contested issues of today, such as the constitutionality of the Affordable Care Act. Who wields power and how that power is allowed to be exerted is a central concern to any society. That is why much of the U.S. Constitution focuses on government powers, and why this information is a necessity for any student of American government.

We typically assume that it is the duty of the U.S. Supreme Court to interpret relevant constitutional clauses for us through the cases on their docket. Indeed, virtually all constitutional law books take this approach. However, one of the most interesting recent developments in the teaching of constitutional law in undergraduate classes has been the publication of a book that takes a very different approach. The book we are using this semester differs from any other I have used in the past. Instead of being organized by topic (with a chapter on the interstate commerce clause and a chapter on judicial power, for example), this one is organized by historical era. Instead of assuming that the U.S. Supreme Court is pretty much the only actor that defines constitutionalism for us, this one acknowledges that how we think of the constitution and what it means is influenced by many actors. If you've taken another constitutional law class at UVM, this one will likely be a bit different than what you're used to because of the novel approach our book takes. We'll still be reading a lot of Supreme Court case excerpts, but many other kinds of readings are included in this volume, which should give us a richer and deeper understanding of the evolution of debate over issues related to government power.

**REQUIRED TEXT**

- Gillman, Howard, Mark A. Graber, and Keith E. Whittington. 2013. *American Constitutionalism: Volume 1 Structures of Government*. New York: Oxford University Press. The ISBN number is 978-0-19-975126-6 (vol. 1). I recommend that you bring your book to class every day.

NOTE: You MUST be sure that you purchase Volume 1 of this book. Volume 2 ("Rights and Liberties") has a very similar cover, but is an unacceptable substitute for the class. The bookstore has confused these books in the past, so check that you have the correct book even if you purchase it from the bookstore.

**OTHER READINGS**

Although the Gillman, Graber, and Whittington (GGW) text will constitute the vast majority of required readings in this course, other readings will be assigned as the semester progresses. These will either be distributed in class or posted on Blackboard.

## BLACKBOARD

Copies of the syllabus and exam prompts 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. If there is an overhead or handout in class that you'd like added to Blackboard, simply ask and I will do so. Any important class announcements, including assigned readings for the week, will be posted on Blackboard as well.

## COURSE REQUIREMENTS

Midterm Exams. Two in-class exams will be given during the semester (on **Wednesday, February 19<sup>th</sup>** and **Wednesday, April 2<sup>nd</sup>**). Barring an **unavoidable** family or medical emergency, the mid-semester exams will only be given on these dates. If you miss a semester exam and are allowed to take a make-up, your make-up exam will be given during a common make-up time for all of my students. Any and all make-up exams will therefore be administered at **9:00 AM on Thursday, May 1<sup>st</sup>**. This is the course policy and you are strongly advised to make every effort to attend the regularly scheduled mid-semester exam to avoid having to take a make-up at the end of the semester. The format of this exam will consist of essay and short answer questions. I plan to distribute potential essay questions ahead of time.

Final Exam. An in-class cumulative final exam will be given at the time provided by the University, which is from **8:00am to 10:15am on Friday, May 2<sup>nd</sup>**. (It's unnecessary for the exam to start at 7:30 AM.) The format of this exam will be similar to the previous exams, and will be discussed in more detail as the semester progresses.

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 (reserved for those who are clearly unprepared but insist on trying to answer the quiz prompt anyway) 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 my determination as to how class is best conducted, 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

## GRADING SCHEME

Final grades will be calculated as follows:

Midterm Exams	25% each	Quiz Average	15%
Final Exam	25%	Participation	10%
		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. 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.
2. 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.
3. 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.
4. All cell phones, iPads, laptops, 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 not allowed for use in class***, unless you are a registered course note taker working through the ACCESS office, or otherwise have ACCESS office accommodation to use a laptop in class. I reserve the right to reduce the final grade of any student who misuses electronic devices in class.
5. As per University policy: "The uvm.edu e-mail address that has been issued to you is the official means by which the University will communicate with you (during academic sessions and break periods). You are responsible for checking e-mail (from the University) sent to your University e-mail address."

## COURSE SCHEDULE

Our daily agenda may vary from this outline as necessary and as announced in class. “GGW” refers to the Gillman, Graber, and Whittington book.

<u>Dates</u>	<u>General Topic</u>	<u>Readings for this date</u>
PART 1: AMERICAN CONSTITUTIONALISM AND THE COLONIAL ERA		
Jan. 13	Course Introduction and Overview, The U.S. Constitution	GGW, preface and Appendix 1 (the U.S. Constitution)
Jan. 15	Basics of American Constitutionalism	GGW, Chapter 1
Jan. 17	The Colonial Era	GGW, Chapter 2
<i>Monday, January 20</i>	<i>Martin Luther King, Jr. Holiday</i>	
PART II: THE FOUNDING ERA (1776 – 1788)		
Jan. 22	Judicial Review and the Bill of Rights	GGW, p. 49-64
Jan. 24	National Powers and Federalism	GGW, p. 64-91
PART III: THE EARLY NATIONAL ERA (1789 – 1828)		
Jan. 27	Establishment of Judicial Review	GGW, p. 93-112
Jan. 29	Judicial Review: Extension and Criticism	GGW, p. 112-118 plus Van Alstyne article (on Blackboard)
Jan. 31	Necessary and Proper Powers and the National Bank	GGW, p. 118-139
Feb. 3	Congressional Powers and Sovereign Immunity	GGW, p. 139-163
Feb. 5	State Power and Separation of Powers	GGW, p. 163-183
PART IV: THE JACKSONIAN ERA (1829 – 1860)		
Feb. 7	Judicial Power and Structure	GGW, p. 185-206

Feb. 10	Slavery: The Fugitive Slave Clause and Territories	GGW, p. 206-221
Feb. 12	The Dormant Commerce Clause	GGW, p. 221-233
Feb. 14	Separation of Powers and War Powers	GGW, p. 233-247

*Monday, February 17      Presidents' Day Holiday*

**WEDNESDAY, FEBRUARY 19                      MID-SEMESTER EXAM #1**

**PART V: SECESSION, CIVIL WAR, AND RECONSTRUCTION (1861 – 1876)**

Feb. 21	Judicial Power and Reticence	GGW, p. 249-276
Feb. 24	Secession and Reconstruction of States	GGW, p. 277-295
Feb. 26	War Powers	GGW, p. 295-317

**PART VI: THE REPUBLICAN ERA (1877 – 1932)**

Feb. 28	Reemergence of Judicial Power	GGW, p. 319-342
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*March 3 – 7                      Spring Break*

Mar. 10	Congressional Power to Regulate Commerce	GGW, p. 342-363
Mar. 12	Tax and Spend and Other Congressional Powers	GGW, p. 363-381
Mar. 14	Territorial Acquisition and Federalism	GGW, p. 381-396
Mar. 17	Police Powers and Economic Substantive Due Process	GGW, p. 396-402 and “Due Process in the Republican Era” (on Blackboard)
Mar. 19	Presidential Power and Nondelegation	GGW, p. 401-415

**PART VII: THE NEW DEAL AND GREAT SOCIETY ERA (1933 – 1968)**

Mar. 21	Judicial Supremacy: Concerns and Criticisms	GGW, p. 417-442
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Mar. 24	Judicial Supremacy: Examples	GGW, p. 442-458
Mar. 26	Commerce Power Reconsidered	GGW, p. 458-480
Mar. 28	Tax and Spend Power, Limits to Presidential Power	GGW, p. 480-502
Mar. 31	Presidential Power over Domestic and Foreign Affairs	GGW, p. 502-512

**WEDNESDAY, APRIL 2<sup>ND</sup>      MID-SEMESTER EXAM #2**

**PART VIII: LIBERALISM DIVIDED (1969 – 1980)**

Apr. 4	Judicial Power and Federalism in an Uncertain Era	GGW, p. 513-537
Apr. 7	Interstate Travel, War Powers, and Vietnam	GGW, p. 537-559

**PART IX: THE REAGAN ERA (1981 – 1993)**

Apr. 9	The “Reagan Revolution” and the Judiciary	GGW, p. 563-582
Apr. 11	Reconsidering National Power and Federalism	GGW, p. 583-596
Apr. 14	Separating Powers and Modern Governing	GGW, p. 596-613

**PART X: THE CONTEMPORARY ERA (1994 – PRESENT)**

Apr. 16	Judicial Power, “Calling Balls and Strikes”	GGW, p. 615-637 and “Statement of John G. Roberts, Jr.” (on Blackboard)
Apr. 18	The Power to Regulate Commerce Reconsidered	GGW, p. 637-657
Apr. 21, 23, 25	Federalism, Sovereign Immunity and Congressional Powers Reconsidered	GGW, p. 657-686 and <i>NFIB v. Sebelius</i> (on Blackboard)
Apr. 28	Presidential Power and the War on Terror	GGW, p. 686-700
Apr. 30	War Power, Executive Privilege, and Immunity	GGW, p. 700-714

**\*\*\* CUMULATIVE FINAL EXAMINATION\*\*\*  
FRIDAY, MAY 2<sup>ND</sup> FROM 8:00AM – 10:15AM**

(This time is scheduled by the University. Exams will NOT be given at any other time to accommodate any student’s personal schedule, so please plan accordingly.)