

THE CONSTITUTION AND GOVERNMENT POWERS: Political Science 520 Spring Quarter 2006

“The Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers...[in which colonial legislatures routinely meddled in judicial functions]. The Framers crafted separated powers as a structural safeguard...establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of inter-branch conflict.”—Justice Antonin Scalia, in Plaut v. Spendthrift Farm (1995)

“The layman’s constitutional view is that what he likes is constitutional and that which he doesn’t like is unconstitutional.”—Justice Hugo Black

Dr. Brett Curry, Lecturer

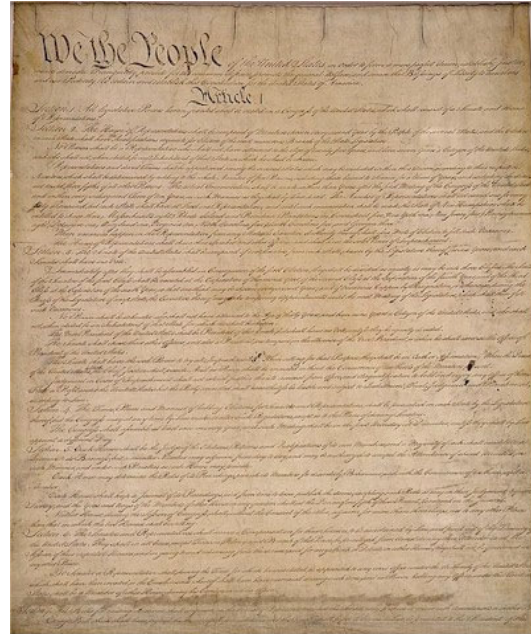
Class Hours: 9:30-11:18, Tu, Th

Office: 2120 Derby Hall

Phone: 292-2881 (email preferred)

Email: curry.130@osu.edu

Office Hours: 2-3:30pm W, or by appt



Mr. Banks Miller, Graduate Teaching Associate

Email: miller.3676@osu.edu

Office: 100 Derby Hall

Office Hours: By appointment

Course Description

Virtually everyone agrees that the United States Constitution represents the cornerstone of American government. In addition to being nearly 220 years old, it is also surprisingly short. It contains a preamble, seven articles, and twenty-seven amendments, but is still about the length of a typical sports section in a daily newspaper. This has meant that Americans must rely on the United States Supreme Court to interpret this general—and oftentimes vague—document. Consequently, it is necessary to study a wide body of Supreme Court decisions in order to gain a better and more complete grasp of the Constitution’s meaning. By examining topics including the institutional authority the U.S. Constitution grants the Judicial, Legislative, and Executive branches of government, exploring the relationship between federal and state government, and discovering what the Supreme Court has said with regard to various economic liberties we will do just that over the remainder of the quarter.

Course Goals

Upon completion of this course, students will be familiar with:

1. What the United States Constitution (as interpreted by the Supreme Court) says about the institutional powers of the Federal government's three branches, the coexistence of the state and national governments in our unique federal system, and just what actions the federal government is allowed to take without violating the economic liberties of private individuals.
2. The ways in which both political and legal considerations have shaped the development of institutional powers and constraints in the United States.

Course Readings

The readings for this course will be drawn from Constitutional Law for a Changing America: Institutional Powers and Constraints (Vol. 1, Ed. 5), by Lee Epstein and Thomas G. Walker (CQ Press 2004). Constitutional Law for a Changing America (hereafter referred to as Epstein and Walker) is our textbook for the course and is available for purchase at SBX or can be ordered from any number of online sources. (Be sure to get the **BLUE** book—not the red book—as there are two volumes in this set and the other is being used by another instructor this quarter).

Let me emphasize something else about this course. It is imperative that you **DO NOT FALL BEHIND IN THE READING**. Given the substantial amount of material we will be covering in a relatively short period of time, you will find yourself overwhelmed if you do not keep up.

Course Requirements

Examination I: 30%
Examination II: 35%
Examination III: 35%

Please remember that this is **NOT** a correspondence course. If you do not come to class regularly, you will not do well on the exams—period. In addition, I expect each of you to have read and briefed the cases designated on the syllabus **in advance of** each class. You will have an opportunity to earn a small amount of extra credit (up to 2%) for this course. Details will be provided later in the quarter.

Examinations and Assignments

There will be three examinations in this course—two in-class midterms during the fourth and seventh weeks of the quarter as well as a **non-comprehensive** final examination that will be held on Thursday, June 8th, from 9:30 to 11:18am. Each examination will consist of identification terms and/or concepts, some of which will be presented in multiple

choice format. There is also likely to be some combination of hypothetical cases and/or short answer essay questions on the exam. I will inform you as to the exact format of each examination at least one week prior to the exam.

These examinations will be challenging, but by no means impossible. You will get a great deal out of this course if you work at it, but do not expect this to be an “easy” class. You will not “get lucky” and happen to do well on the exams if you do not keep up with the required reading and come to class on a regular basis. Quite simply, the better you know the cases we study, the better you will do on the exams. Given the nature of the material we will be covering in class, it is vital that you study all the way along. If you wait until the night before the exam to begin studying, you will not do well.

As an additional incentive to come to class, my exams are purposefully structured to benefit those who attend class regularly. While the assigned readings will certainly be the source of test material, there is a strong correlation between coming to class and doing well on my exams.

Any conflicts must be discussed with the instructor ***prior*** to all examinations. Further, if you happen to miss an exam due to an emergency that makes it impossible for you to consult with me beforehand, the burden of proof will be on you to demonstrate the legitimacy of your absence. **I am quite serious about this—college is not a sanctuary from responsibility, and making special provisions for students who act irresponsibly is not fair to the vast majority who “play by the rules.”** (If an emergency does arise, discuss it with me as soon as possible! For instance, do not miss the midterm and come to me a week or two afterward and casually mention that you need to make it up sometime—I will NOT be sympathetic).

My Obligations to You

As your instructor, I have several obligations to you. First, I hope to create a classroom atmosphere that is pleasant, relaxed, and conducive to learning and discussion. We are committed to grading and returning your work promptly. You will also find that I am very approachable, should you have any questions or concerns. Finally, because two uninterrupted hours is far too long a period to expect anyone to be fully engaged in lecture or discussion, it will be my usual practice to take a brief break midway through class whenever possible.

Student Obligations

Although I will attempt to foster a comfortable atmosphere in the classroom, I would appreciate your cooperation in the following ways:

1. Come to class on time and stay to the end. This is in your own best interest, since the introduction and conclusion of class are often the most important parts. It is also in the interest of the class—it is distracting when students wander in late or pack up their books before class is over.

2. Beeping pagers and/or ringing cell phones are distracting and rude to both your instructor and fellow classmates. I reserve the right to answer any and all cell phone calls that may interrupt class. **Please switch them off before class.**
3. Because this course will involve some discussion and debate, please be attentive to and respectful of others' views. Feel free to disagree with someone else's position, but please do so respectfully. Most importantly, please **do not be afraid to speak up** if you have something to say. While class participation is not formally reflected in your overall course grade, the quality of an individual's active class participation and attendance will be taken into account in borderline grade situations.

Academic Honesty

Academic misconduct, as defined by the University in the Student Handbook, **will NOT be tolerated**. All the work you do in this course is expected to be your own. No cheating on examinations is acceptable, and any suspected cases of academic dishonesty will be immediately reported to the university committee on academic misconduct and dealt with according to University policy.

Plagiarism of written assignments—using someone else's words or ideas without proper citation—will not be tolerated. If you are unsure whether your work meets standards of academic honesty, please feel free to discuss your questions or concerns with me.

Note: In order to maintain academic honesty, no late-arriving student will be allowed to begin a midterm or final examination **AFTER** the first person finishes and leaves the room.

Disability Services

Students with disabilities who feel they may need special assistance should inform me of their needs in a timely manner (rest assured, these discussions will be kept confidential). Course materials are available in alternative formats upon request. For such materials, please contact Mr. Wayne DeYoung, 2140 Derby Hall, 154 North Oval Mall, 292-2880.

Course Schedule and Assigned Readings (Subject to Change)

WEEK 1 (3/28, 3/30): INTRODUCTION TO INSTITUTIONAL AUTHORITY

Tu: Course Introduction

Th: Institutional Authority/The Judiciary
Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
Eakin v. Raub (1825)

Read Epstein & Walker p. 3-11; 55-94.
Suggested background reading p. 13-53.



WEEK 2 (4/4, 4/6): INSTITUTIONAL AUTHORITY: THE JUDICIARY AND THE LEGISLATURE

Tu: The Judiciary (Cont'd)/The Legislature

Ex parte McCardle (1869)
Baker v. Carr (1962)
Nixon v. United States (1993)
Flast v. Cohen (1968)

Powell v. McCormack (1969)
U.S. Term Limits, Inc v. Thornton (1995)
Gravel v. United States (1972)

Read Epstein & Walker p. 94-148.

Th: The Legislature (Cont'd)

McCulloch v. Maryland (1819)
McGrain v. Daugherty (1927)
Watkins v. United States (1957)
Barenblatt v. United States (1959)
United States v. Curtiss-Wright Export Corp. (1936)
South Carolina v. Katzenbach (1966)

Read Epstein & Walker p. 148-186.



WEEK 3 (4/11, 4/13): INSTITUTIONAL AUTHORITY: THE EXECUTIVE

Tu: The Executive I
Video: CNN: Election 2000
Bush v. Gore (2000)

In Re Neagle (1890)
Clinton v. City of New York (1998)
Read Epstein & Walker p. 187-216.

Th: The Executive II
Morrison v. Olson (1988)
United States v. Nixon (1974)
Mississippi v. Johnson (1867)
Nixon v. Fitzgerald (1982)
Clinton v. Jones (1997)
Read Epstein & Walker p. 216-224 and 234-252 (skim 224-234).

WEEK 4 (4/18, 4/20): MIDTERM EXAMINATION I

Tu: **FIRST MIDTERM EXAMINATION**

Th: No class—Instructor at Conference.

WEEK 5 (4/25, 4/27): THE EXECUTIVE, SEPARATION OF POWERS/POWERS DURING WARTIME

Tu: The Executive III
Ex parte Grossman (1925)
Murphy v. Ford (1975)
Mistretta v. United States (1989)
INS v. Chadha (1983)
Bowsher v. Synar (1986)
United States v. Curtiss-Wright (1936)
Read Epstein & Walker p. 252-281.

Th: The Executive and Powers During Wartime
The Prize Cases (1863)
Ex parte Milligan (1866)
Ex parte Quirin (1942)
Korematsu v. United States (1944)
Youngstown Sheet & Tube Company v. Sawyer (1952)
Dames & Moore v. Regan (1981)
Read Epstein & Walker p. 282-316.

WEEK 6 (4/25, 4/27): WARTIME POWERS/FEDERALISM

Tu: Post-9/11 Cases
Hamdi v. Rumsfeld (2004)
Rasul v. Bush (2004)
Hamdan v. Rumsfeld (2006)

Federalism I
McCulloch v. Maryland (1819)
Scott v. Sandford (1857)
Hammer v. Dagenhart (1918)

Read Epstein & Walker, p. 319-345.

Th: Federalism II
United States v. Darby Lumber (1941)
National League of Cities v. Usery (1976)
Garcia v. San Antonio Metropolitan Transit Authority (1985)
New York v. United States (1992)
Printz v. United States (1997)
Alden v. Maine (1999)
Michigan v. Long (1983)

Read Epstein & Walker, p. 345-388.

WEEK 7 (5/2, 5/4): FEDERALISM/EXAM

Tu: Federalism III
State of Missouri v. Holland (1920)
Crosby v. National Foreign Trade Council (2000)
Pennsylvania v. Nelson (1956)
Pacific Gas and Electric Co. v. State Energy Commission (1983)

Read Epstein & Walker, p. 388-405.

Th: **SECOND MIDTERM EXAMINATION**

WEEK 8 (5/9, 5/11): NATION-STATE RELATIONS: TAXING AND SPENDING/COMMERCE

Tu: The Power to Tax and Spend
United States v. United States Shoe Corporation (1998)
McCray v. United States (1904)
Bailey v. Drexel Furniture Co. (1922)
United States v. Butler (1936)
Steward Machine Co. v. Davis (1937)
South Dakota v. Dole (1987)

Read Epstein and Walker p. 484-485; 494-496; 503-523.

Th: Commerce I
Gibbons v. Ogden (1824)
United States v. E.C. Knight (1895)
Stafford v. Wallace (1922)
A.L.A. Schechter Poultry Corp v. United States (1935)

Carter v. Carter Coal Company (1936)
N.L.R.B. v. Jones & Laughlin Steel Corp. (1937)
Wickard v. Filburn (1942)
Read Epstein & Walker, p. 406-446.

WEEK 9 (5/16, 5/18): THE COMMERCE CLAUSE/THE CONTRACT CLAUSE

Tu: Commerce II
United States v. Lopez (1995)
United States v. Morrison (2000)
Champion v. Ames (1903)
Heart of Atlanta Motel v. United States (1937)
Cooley v. Board of Wardens (1852)
Southern Pacific Company v. Arizona (1945)
Read Epstein & Walker, p. 446-476.

Th: Commerce III/The Contract Clause
Hunt v. Washington State Apple Advertising Commission (1977)
Maine v. Taylor (1986)
Granholm v. Heald (2004)
Gonzalez v. Raich (2006)

Fletcher v. Peck (1810)
Trustees of Dartmouth College v. Woodward (1819)
Proprietors of Charles River Bridge v. Proprietors of Warren Bridge (1837)
Read Epstein & Walker, p. 476-483; 539-560.

WEEK 10 (5/23, 5/25): THE CONTRACT CLAUSE/SUBSTANTIVE DUE PROCESS

Tu: The Contract Clause (Cont'd)/Substantive Due Process
Stone v. Mississippi (1880)
Home Building and Loan Association v. Blaisdell (1934)
United States Trust Company v. New Jersey (1977)
Allied Structural Steel Co. v. Spannaus (1978)

The Slaughterhouse Cases (1873)
Munn v. Illinois (1877)
Allgeyer v. Louisiana (1897)
Lochner v. New York (1905)
Read Epstein & Walker, p. 560-601.

Th: Substantive Due Process/The Takings Clause
Muller v. Oregon (1908)
Adkins v. Children's Hospital (1923)
Nebbia v. New York (1934)
West Coast Hotel v. Parrish (1937)
Williamson v. Lee Optical Company (1955)
BMW of North America v. Gore (1996)
Read Epstein & Walker, p. 601-626.

WEEK 11: (5/30, 6/1): THE TAKINGS CLAUSE/COURSE WRAP-UP

Tu: The Takings Clause
United States v. Causby (1946)
Penn Central Transportation Company v. New York (1978)
Berman v. Parker (1954)
Hawaii Housing Authority v. Midkiff (1984)
Nollan v. California Coastal Commission (1987)
Lucas v. South Carolina Coastal Council (1992)
Dolan v. City of Tigard (1994)
Kelo v. City of New London (2005)
Read Epstein & Walker, p. 627-657.

Th: Catch-up and Course Wrap-Up

FINAL EXAMINATION: THURSDAY, JUNE 8, FROM 9:30-11:18am

