

Political Science 520 – Summer 2001

The American Constitution and Government Powers

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“That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles therefore, so established, are deemed fundamental.”

Chief Justice John Marshall
Marbury v. Madison (1803)

The Constitution and the decisions of Supreme Court justices who interpret it have defined the contours of government power in the United States for over 200 years. As we will see, however, the precise scope and nature of that power is not always clear. Legitimate questions arise about whether particular governmental entities have the authority to undertake specific kinds of actions. Moreover, conflicts sometimes arise between the branches (separation of powers) or between the national and state governments (federalism) concerning appropriate balance of power among different governmental bodies.

In this course we will examine the constitutional powers of our national institutions, the United States judicial, legislative, and executive branches. We will also look at how our constitutional structure limits state and national government actors. Finally we will consider how some of the specific tools the United States government has to address national problems, such as the commerce power, have evolved over time through Supreme Court decision making.

A word of warning: while this is probably one of the most useful courses you can take to understand the fundamental structure of our governmental system, it is not an easy class! There is a substantial amount of difficult reading. Moreover, because material in this class is largely developed through doctrinal case law it requires a unique way of thinking that students may find awkward at first. Stick to it! Work at it! The pay off can be quite substantial.

The text, Epstein, Lee & Thomas G. Walker. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 4th edition. is available at SBX. This is a relatively new release. Please make sure you have the most current (4th) edition.

Course Requirements & Grading

Attendance & Participation

Class time will be spent talking about assigned readings and related material. Much of our time will be spent synthesizing law from individual cases into a more generally applicable body of legal doctrine to understand how the Court approaches different questions regarding government powers. Due to the difficult nature of the material students are expected to come to class each session having read all required materials from the text. I will take attendance at each class session. Although not formally required, participation in class discussions is encouraged. Students who participate and ask questions generally find it helpful in understanding course material.

Required Papers

There are two 4 –5 page papers due in class on **July 10** and **August 9**. These papers are meant to be well organized essays including a thesis statement which you should back up with evidence from course material in the body of the paper. They will not require outside research. You should utilize **both** lecture notes and the readings from the text (including case decisions) to demonstrate a basic understanding of legal concepts and democratic values that may be in conflict in particular areas of the law. These assignments are designed to make sure you understand the “big picture” with regard to the larger values are at stake when the Court is asked to intervene in particular cases.

Exams

There will be a midterm and a final. Midterm is scheduled for **July 26**. The final will be on **August 28**. Only under **extraordinary** circumstances will make-ups be permitted. You must let me know in advance and get my permission if you are going to miss an exam. I will provide more details regarding the format as the exams draw closer but they are likely to be some combination of multiple choice and short answer questions including legal hypotheticals (a question format we will practice in class lectures).

Grades will be based on the following formula:

1. Attendance 5%
2. First Paper 15%
3. Midterm Examination 30%
4. Second Paper 15%
5. Final Examination 35%

Academic Honesty

Academic misconduct, as defined by the University in the Student Handbook, will not be tolerated. All of the work you do in this course is expected to be your own. Absolutely no cheating or plagiarism will be permitted. Any cases of cheating or plagiarism will be reported to the university committee on academic misconduct and handled according to university policy.

Disability

Students with disabilities are responsible for making their needs known to the instructor and seeking available assistance in a timely manner. Students with disabilities that have been certified by the Office for Disability Services will be given appropriate accommodations. Those students should let me know about their needs as soon as possible.

Class Outline and Assignments

- June 19 I. Introduction to the Course
II. Introduction to our Constitutional Framework
- June 21 II. The Constitutional Framework (cont')
A. The Constitution pp.1-10 & pp. 633-642
B. Understanding the Supreme Court pp. 13-24
C. Legal approaches to constitutional interpretation pp. 24-34
- June 25 III. The Judicial Branch
A. Establishing Judicial Review pp. 61-91
Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
B. Constraints on Judicial Power pp. 91-94
1. Jurisdiction
Ex Parte McCartle (1869)
- June 28 III. The Judicial Branch
B.. Constraints on Judicial Power (cont') pp. 94-119
2. Justiciability
a. Case & Controversy Requirements
b. Timing issues (Mootness & Ripeness)
c. The Political Question Doctrine
Baker v. Carr (1962)
Nixon v. United States (1993)
3. Standing to Sue
Flast v. Cohen (1993)
4. The Separation of Powers System as a Constraint
- July 3 **** Class Cancelled for 4th of July Holiday****
- July 5 IV. The Legislative Branch
A. Historical Overview pp. 121-125
B. Authority over Internal Affairs pp. 125-147
1. Membership
Powell v. McCormack (1969)
US Term Limits v. Thornton (1995)
2. Speech or Debate Clause

Gravel v. United States (1972)

July 10 **** Note: First Paper Due in Class****

IV. The Legislative Branch

C. Sources & Scope of Legislative Power pp. 147-183

1. Enumerated and Implied Powers

McCulloch v. Maryland (1819)

McGrain v. Daugherty (1927)

Watkins v. United States (1957)

Barenblatt v. United States (1959)

2. Inherent Powers

United States v. Curtiss-Wright Export Corporation (1936)

3. Amendment Enforcing Power

South Carolina v. Katzenbach (1966)

July 12 V. The Executive Branch

A. Introduction: Presidential Selection & Removal pp.185-194 & 647-654

Bush v. Gore (2000)

B. Faithful Execution of the Laws pp.194-200

In re Neagle (1890)

C. Domestic Powers pp. 224-248

1. Veto Power

Clinton v. New York (1998)

2. Appointment and Removal

Morrison v. Olsen (1988)

Myers v. United States (1926)

Humphrey's Executor v. United States (1935)

July 17 V. The Executive Branch

C. Domestic Powers (cont') pp. 224-248

3. Presidential Privilege

United States v. Nixon (1974)

4. Presidential Immunity from Lawsuits

Mississippi v. Johnson (1867)

Nixon v. Fitzgerald (1982)

Clinton v. Jones (1997)

5. Power to Pardon

Ex Parte Grossman (1925)

Murphy v. Ford (1975)

D. The President & Foreign Policy pp. 248-251

United States v. Curtiss-Wright Export Corp. (1936)

July 19 VI Separation of Powers

A. Domestic Disputes 252-270

1. Delegation of Legislative Powers

Mistretta v. United States (1989)

- 2. Congressional Overreaching
 - INS v. Chadha* (1983)
 - Bowsher v. Synar* (1986)

July 24 Catch Up & Review

July 26 **** MIDTERM****

July 31 VI. Separation of Powers

- B. War & National Emergencies pp. 271-296
 - The Prize Cases* (1863)
 - Ex Parte Milligan* (1866)
 - Korematsu v. United States* (1944)
 - Youngstown Sheet & Tube Company v. Sawyer* (1952)
 - Dames & Moore v. Regan* (1981)

August 2 VII. Federalism

- A. Allocating Government Power pp. 299-303
- B. Nation / State Relations pp. 305-326
 - McCulloch v. Maryland* (1819)
 - Scott v. Sanford* (1857)
 - Hammer v. Dagenhart* (1918)
 - United States v. Darby Lumber* (1941)

August 7 VII. Federalism

- B. Nation / State Relations (cont') pp. 327-250
 - 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)
- C. The Eleventh Amendment pp.350-359
 - Alden v. Maine* (1999)

August 9 **** Note Second Paper Due in Class****

VIII. Federalism

- D. National Preemption of State Law pp. 369-383
 - State of Missouri v. Holland* (1920)
 - Crosby v. National Foreign Trade Council* (2000)
 - Pennsylvania v. Nelson* (1956)
 - Pacific Gas & Electric Co v. State Energy Resources* (1983)

IX. The Commerce Power

- A. Foundations of the Commerce Power pp. 385-399
 - Gibbons v. Ogden* (1824)
 - United States v. E.C. Knight* (1895)
 - Stafford v. Wallace* (1922)

- August 14 IX. The Commerce Power
- B. Evolution of Commerce Power pp. 399-425
 - A.L.A. Schechter Poultry Corp v. United States* (1935)
 - Carter v. Carter Coal Company* (1936)
 - NLRB v. Jones & Loughlin Steel Corp.* (1937)
 - Wickard v. Filburn* (1942)
 - C. Modern Limits on the Commerce Power 425-436
 - United States v. Lopez* (1995)
 - United States v. Morrison* (2000)
- August 16 IX. The Commerce Power
- D. Using the Commerce Clause for Social Regulation pp. 436-444
 - Champion v. Ames* (1903)
 - Heart of Atlanta Motel v. United States* (1964)
 - E. States & The Commerce Clause pp.444-460
 - Cooley v. Board of Wardens* (1852)
 - Southern Pacific Co. v. Arizona* (1945)
 - Hunt v. Washington Apple Advertising Commission* (1977)
 - Maine v. Taylor* (1986)
- August 21 X. Economic Substantive Due Process
- A. The Development of Substantive Due Process pp. 554-572
 - The Slaughter House Cases* (1873)
 - Munn v. Oregon* (1908)
 - Allgeyer v. Louisiana* (1897)
 - B. The Roller Coaster Ride of Substantive Due Process pp.572-588
 - Lochner v. New York* (1905)
 - Muller v. Oregon* (1908)
 - Adkins v. Children's Hospital* (1923)
 - C. The Decline of Substantive Due Process pp. 588-599
 - Nebbia v. New York* (1934)
 - West Coast Hotel v. Parrish* (1937)
 - Williamson v. Lee Optical Company* (1955)

August 23 Catch Up & Review

August 28 ****FINAL EXAM****