

Political Science 520  
Winter 2005

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Office hours: TTH 3:30-4:30

## AMERICAN CONSTITUTIONAL LAW AND GOVERNMENTAL POWERS

This course is rooted in the notion that the Supreme Court is one of the chief actors in our system of national policy-making. As Justice Frankfurter once wrote, "the question is not whether judges make law, but when and how and how much." Judicial law-making is nothing unusual; it stems in the main from the Court's power to decide particular cases. For evidence of the profound impact of the Supreme Court and judicial law-making in action in our daily lives, we need go no further than the front pages of the *Columbus Dispatch*, *The New York Times*, or the evening news.

Constitutional law spans a wide variety of topics. Most of us think of the Court in terms of its actions in the areas of civil rights and liberties--often the most controversial and visible facets of its business. Yet, before one can understand conflicts between the individual and government, one needs to have a thorough knowledge of the powers of government and issues such as the separation of powers, division of powers, and federalism. Here we focus on the limits on and sources of governmental powers under the federal constitution. We consider judicial review, presidential powers, legislative authority, federalism, interstate commerce, and the police powers of the states. Throughout our discussion, we should keep in our sights: how has the Court shaped the nature, quality, and scope of governmental action in our society?

Lee Epstein and Thomas G. Walker's *Constitutional Law for a Changing America: Institutional Powers and Constraints*, CQ Press, 2004, fourth edition, serves as the casebook. We have placed an exclusive order for this book at SBX. Since all of the reading for this course comes out of this book, you should purchase it as soon as possible. Since we often refer to the casebook in class, you will want to bring **Constitutional Law** with you every day. For class in the first week, you should begin reading right away.

You have several responsibilities. First, you should read and re-read the assignments on time and with care. Second, you should attend lectures. We will take attendance at various junctures and award points for your presence; and, of course, you are well-advised in any event to attend regularly. Third, you should participate in class, either voluntarily or when I call on you. Last, you must take all of the examinations.

There are easy courses on campus; this is not one of them. This is not a course for those taking 20 hours or those who for whatever reason cannot attend consistently to the reading and come to class. We require a lot of challenging reading material; and three difficult examinations.

Your grade for the course will be based on two mid-course examinations and a final examination, and attendance and participation. You can earn a maximum of 100 points, distributed as follows:

Attendance	10
First mid-term	22
Second mid-term	26
Final Exam	42

You must complete all of the examinations. Failure to do so will result in a failure in the course.

I will set the dates for the mid-terms soon after the beginning of the quarter.

This course, like all courses at Ohio State University, requires strict observance of the rules against plagiarism.

We will strive to provide equal access to this course for all students. To that end, we will work with students who need to have information on various media--e.g., tape-recordings, braille, etc.--and who need to take examinations under somewhat different circumstances. Please let us know as soon as possible about your needs.

You will run into strange words from time to time in this course. Our casebook has a glossary of terms. For questions about legal vocabulary not in the glossary, consult a legal dictionary, of which **Black's Legal Dictionary** is the standard. Edward S. Corwin's **The Constitution and What It Means Today** provides a detailed analysis of constitutional development; you may find it useful as you read the casebook

The readings are formidable, so you will need to apply all of your intellectual powers. Even if we dawdle on a set of cases or ideas, you should continue at the pace set out in the schedule. You should keep on top of the reading, because this is not the sort of thing you can read and digest the evening before an examination. Now, as you go through the cases, some of you will naturally underline or highlight the most important passages. But we also commend the practice of briefing each case. You will have an easier time in preparing for examinations if you have condensed the facts, issues, reasoning, and outcomes of the cases.

## SECTION I: THE CONSTITUTION, JUDICIAL REVIEW (three sessions)

### Part 1. THE U.S. CONSTITUTION

An Introduction to the U.S. Constitution  
The Road to the U.S. Constitution  
Underlying Principles of the Constitution

1. Understanding the U.S. Supreme Court  
Processing Supreme Court Cases  
Supreme Court Decision Making: The Role of Law  
Supreme Court Decision Making: The Role of Politics  
Conducting Research on the Supreme Court

### Part 2. INSTITUTIONAL AUTHORITY

Structuring the Federal System  
The Origins of the Separation of Powers/Checks and Balances System  
Separation of Powers and the Constitution  
Contemporary Thinking on the Constitutional Scheme: Separation of Powers Games

2. The Judiciary  
Establishment of the Federal Judiciary  
Judicial Review

## SECTION II: JUDICIAL REVIEW (two sessions)

Marbury v. Madison (1803)  
Martin v. Hunter's Lessee (1816)  
Eakin v. Raub (1825)  
Constraints on Judicial Power: Article III  
Ex parte McCordle (1869)  
Baker v. Carr (1962)  
Nixon v. United States (1993)  
Flast v. Cohen (1968)  
Constraints on Judicial Power: The Separation of Powers/Checks and Balances System

## SECTION III: LEGISLATIVE POWER (two sessions)

3. The Legislature  
Article I: Historical Overview  
Congressional Authority over Internal Affairs: Institutional Independence and Integrity  
Powell v. McCormack (1969)  
U.S. Term Limits, Inc. v. Thornton (1995)

Gravel v. United States (1972)  
 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)

#### SECTION IV: EXECUTIVE AUTHORITY (two sessions)

4. The Executive  
 Article II: Basic Considerations  
 NEW! Bush v. Gore(2000)  
 The Faithful Execution of the Laws: Defining the Contours of  
 Presidential Power  
 In re Neagle (1890)  
 Domestic Powers of the President  
 Clinton v. City of New York (1998)  
 Morrison v. Olson (1988)  
 Myers v. United States (1926)  
 Humphrey's Executor v. United States (1935)  
 United States v. Nixon (1974)  
 Mississippi v. Johnson (1867)  
 Nixon v. Fitzgerald (1982)  
 Clinton v. Jones (1997)  
 Ex parte Grossman (1925)  
 Murphy v. Ford (1975)  
 The President and Foreign Policy  
 United States v. Curtiss-Wright Export Corp. (1936)

#### SECTION V: THE SEPARATION OF POWERS (two sessions)

5. The Separation of Powers System in Action  
 Domestic Powers  
 Mistretta v. United States (1989)  
 Immigration and Naturalization Service v. Chadha (1983)  
 Bowsher v. Synar (1986)  
 Presidential Power during War and National Emergencies  
 The Prize Cases (1863)  
 Ex parte Milligan (1866)  
 NEW! Ex parte Quirin (1942)  
 Korematsu v. United States (1944)  
 Youngstown Sheet & Tube Company v. Sawyer (1952)  
 Dames & Moore v. Regan (1981)

#### SECTION VI: FEDERALISM (two sessions)

Part 3. NATION-STATE RELATIONS

Allocating Government Power  
The Framers and Federalism  
The Tenth and Eleventh Amendments

#### 6. Federalism

Nation-State Relations: The Doctrinal Cycle  
McCulloch v. Maryland (1819)  
Scott v. Sandford (1857)  
Hammer v. Dagenhart (1918)  
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)

### SECTION VII: FEDERALISM, COMMERCE POWER (two sessions)

#### The Eleventh Amendment

Alden v. Maine (1999)  
New Judicial Federalism  
Michigan v. Long (1983)  
National Preemption of State Laws  
State of Missouri v. Holland (1920)  
Crosby v. National Foreign Trade Council (2000)  
Pennsylvania v. Nelson (1956)  
Pacific Gas and Electric Company v. State Energy Resources  
Conservation and Development Commission (1983)

#### 7. The Commerce Power

Constitutional Foundations of the Commerce Power  
Gibbons v. Ogden (1824)  
Defining Interstate Commerce  
United States v. E. C. Knight Co. (1895)  
Stafford v. Wallace (1922)  
The Supreme Court and the New Deal  
A. L. A. Schechter Poultry Corp. v. United States (1935)  
Carter v. Carter Coal Company (1936)

### SECTION VIII: THE COMMERCE CLAUSE (two sessions)

National Labor Relations Board v. Jones & Laughlin Steel  
Corporation (1937)  
Wickard v. Filburn (1942)  
United States v. Lopez (1995)  
United States v. Morrison (2000)  
Regulating Commerce as a Federal Police Power  
Champion v. Ames (1903)

Heart of Atlanta Motel v. United States (1964)  
The Commerce Power of the States  
Cooley v. Board of Wardens (1852)  
Southern Pacific Company v. Arizona (1945)  
Hunt v. Washington State Apple Advertising Commission (1977)  
Maine v. Taylor (1986)

SECTION IX: ECONOMIC SUBSTANTIVE DUE PROCESS (one session)

10. Economic Substantive Due Process  
The Development of Substantive Due Process  
The Slaughterhouse Cases (1873)  
Munn v. Illinois (1877)  
The Roller Coaster Ride of Substantive Due Process: 1898–1923  
Lochner v. New York (1905)  
The Heyday of Substantive Due Process: 1923–1936  
Adkins v. Children’s Hospital (1923)  
The Depression, the New Deal, and the Decline of Substantive Due Process  
Nebbia v. New York (1934)  
West Coast Hotel v. Parrish (1937)  
Williamson v. Lee Optical Company (1955)  
The Contemporary Relevance of Substantive Due Process  
NEW! BMW of North America v. Gore (1996)