

PSPA 3100 Sec. 001: Constitutional Law
Fall 2009 MWF 11:30-12:20pm SCI
3235

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While based upon a written constitution, the details of our structure of government have evolved as a result of Supreme Court decisions. This course on constitutional law will examine these political and legal processes as foundations of the American political system. This course emphasizes the development of the primary features of the structure of the American system— separation of powers and federalism. We will examine Supreme Court decisions regarding judicial power, legislative powers, executive powers, economic relations, among others. More than just understanding decisions, this course will consider the political context of Supreme Court and its effect on democratic process and electoral accountability. This course does not cover constitutional protections for civil rights or liberties. While those areas of constitutional law are important they are covered in PSPA 3110 and PSPA 3120.

This course is designed to help students build the necessary skills to be successful in careers that require students to engage the law. Whether working as a legal advocate or paralegal or seeking to enter law school, this course will provide the foundation in reading legal material for comprehension, critical thinking skills, and writing necessary to be successful.

REQUIRED MATERIALS

Text: O'Brien, David. 2008. *Constitutional Law and Politics Volume One: Struggles for Power and Governmental Accountability*. Seventh Edition. New York: W.W. Norton & Company.

Either reading the excerpt I provide or obtaining and reading the full opinions for 2009 cases as assigned.

I highly recommend keeping abreast of current events that may develop during the course of the quarter regarding decisions the Supreme Court makes. You can keep up by either reading a national newspaper (i.e., www.washingtonpost.com or www.nytimes.com), listening to the news (i.e., podcasts available at npr.org), or watching the news (i.e., your favorite news program or cnn.com).

Cases from your book are experts. If you would like to read the full text of the opinions, there are several sites available. You can find selected Supreme Court decisions available for free at <http://www.law.cornell.edu/supct> or through Lexis-Nexis available through the UNCP library. Other sources for finding

additional material of interest for cases include the Supreme Court's website, <http://www.supremecourtus.gov/>, and the Oyez Project's multi-media site where you can hear recordings of oral arguments, <http://www.oyez.org/>.

GRADING

Participation and quizzes	15%
First written assignment	15%
Midterm	20%
Second written assignment	25%
Final exam	25%

Grading scale—100-95 = A; 94-92= A-; 91-88= B+; 87-84=B; 83-80=B-; 79-77= C+; 76-73= C; 72-70= C-; 69-67= D+; 66-63= D;

Extra credit is not available for this course.

Participation and quizzes—Participation includes efforts to contribute to the conversation whether asking or answering questions. You must be present regularly to do well on the participation component of the course. Quizzes will be based upon the reading for that day or to test concepts important for understanding the discussion for the day. Quizzes will be given at random intervals. Other in-class activities may be given and counted toward this component of your grade. Quizzes and in-class activities cannot be made up.

Written Assignments—Each assignment will ask you to write an analytical essay on an assigned topic. You will be asked to construct and explain constitutional arguments using your own words. Clear and effective writing will be essential to receiving a good grade. The first assignment will be roughly three pages and the second assignment will be roughly five to six pages. Details for each assignment will be provided in class.

Penalty for late papers is 10 points per day! This penalty is established as a deterrent from handing in late work. It is not supposed to be fair compensation for the extra time spent on the paper. You are much better off submitting your work on time and avoiding the penalty. Please respect deadlines.

Exams—Exams will test your knowledge of the assigned cases and related constitutional controversies as well as your understanding of related legal process and concepts. Exams will consist of short answer and short essay questions. You must take exams at the assigned times. There are no make up exams except for dire and unforeseeable emergencies. Please bring confirming documentation of your situation with any request for a make up exam, otherwise the request will not be allowed.

Grade complaints must be made in writing after 24 hours but no later than one week after return of your assignment. Complaints must be specific about why a mistake in grading has happened and must be responsive to the comments

provided. I worked hard or I need this grade to get into law school are not acceptable grounds for complaint.

PREPARING FOR CLASS

Read the assigned material. This class will move quickly, and concepts will build upon each other. The result is that if you miss a section of reading, later cases will be difficult for you to understand. Be sure you keep up on the reading.

Brief each case. How to compose a brief can be found in your textbook on page 1083. I would recommend including an additional section that emphasizes how the decision makes a change to previous precedent. Writing a brief for each case is highly advised for several reasons. First, writing briefs forces you to think about what you are reading in a systematic way. Second, briefs will be a useful tool in studying for exams and completing your written assignments. While not required, well-written briefs will allow you to use your time for this course more efficiently.

DISABLED STUDENTS: Any student with a documented disability needing academic adjustments is requested to speak directly to Disability Support Services (located in the D.F. Lowry Building) and the instructor, as early in the semester as possible. All discussions will remain confidential. Please contact DSS at 521-6695. The syllabus is also available in alternate formats upon request. Please call the aforementioned number if you desire this.

“When testing accommodations or alternative testing is needed, students are responsible for discussing this issue with the professor to make the appropriate arrangements to have the exam administered. It is the responsibility of the student to schedule exams with DSS at least one week prior to the exam date. Failure to schedule an exam one week in advance may lead to DSS denying the requested time and date for the exam.” For the Exam Proctoring Authorization Form and for more information, visit http://www.uncp.edu/dss/students/directions_for_accesing_exams_for_current_students.htm.

ACADEMIC DISHONESTY: Academic dishonesty will not be tolerated. Any instance of academic dishonesty (plagiarism, cheating, etc.) found will result in an automatic “F” for that assignment and notification to the appropriate Deans.

From the UNCP Student Handbook: “Plagiarism is intentionally or knowingly presenting someone else’s words or ideas as one’s own. You avoid plagiarism by very carefully acknowledging the sources of ideas you use and by appropriately indicating any material that has been quoted [or paraphrased] (that is, by using quotation marks and properly acknowledging the source of the quote, usually with a clear reference source citation and page number).” If an instance comes up where you are unsure whether or not you should cite, play it safe and cite. Visit <http://www.unc.edu/depts/wcweb/handouts/plagiarism.html> for more information on plagiarism.

CONDUCT EXPECTATIONS: Respect should be the dominate value observed by all in this classroom. This includes respecting others' personal views during discussions, being to class on time, and engaging in active listening even if you choose not to talk on a particular day (i.e. don't read the daily or sleep).

COURSE SCHEDULE

CONSTITUTIONAL LAW, JUDICIAL POWER, AND POLITICS

Week 1

Aug 19-- Introduction

Aug 21—U.S. Constitution pp 1-22; *Federalist Paper 78* online

<http://www.constitution.org/fed/federa78.htm>

Week 2 Constitutionalism and Constitutional Politics; Judicial Review

Aug 24— Judicial Review pp 23-38, *Marbury v. Madison* (1803) pp 45- 55

Aug 26— Judicial Review and States pp 796-800, *Martin v. Hunter's Lessee* (1816) 801- 805 and *Cooper v. Aaron* (1958) pp 805- 809

Aug 28— Relationship of Federal-State Courts on Constitutional Questions pp 820-823; *Michigan v Long* (1983) pp 824-828

Week 3 Constitutional Interpretation; Processing and Deciding Cases

Aug 31—Processing and Deciding Cases; Court Structure pp 175- 204, skip box inserts on pp 178-180 and 196-197

Sept 2—Constitutional Interpretation pp 66-95, skip box insert on 68-70

Sept 4—Jurisdiction and Justiciability pp 102- 116, skip box insert on 111-114, and pp 119-127, skip box insert on 120-122.

Week 4

Sept 7- NO CLASS; Labor Day

Sept 9- *Flast v. Cohen* (1968) pp 130-137, *Lujan v. Defenders of Wildlife* (1992) pp 141-145

Sept 11- Controlling the Court—*Korematsu v. United States* (1944) pp 285-295; *Ex Parte McCardle* online <http://supreme.justia.com/us/74/506/case.html>

PRESIDENTIAL POWER

Week 5

Sept 14- Constitution and the president pp 232-237; Presidential Power During War Time Emergencies pp 264-275; National Security and Emergency Powers pp 339- 343

Sept 16- Early development of presidents during wartime—*The Prize Cases* (1863) pp 276-279; *Ex Parte Milligan* (1866) pp 276-285

Sept 18- Securing National Security—*Youngstown Sheet & Tube Co. v. Sawyer* (1952); pp 344-359, *New York Times Co. v. United States* (1971) pp 359- 368

Week 6

Sept 21- Current issues with presidential power during War Time Emergency—The Patriot Act and Warrantless Wiretapping pp 330- 334, pp 368-370

Sept 23- Bush Presidency and the “War on Terror” *Rasul v. Bush* (2004) pp 295-299; *Hamdi v. Rumsfeld* (2004) pp 300-313

Sept 25- *Hamdan v. Rumsfeld* (2006) pp 313-325; **Excerpt from *Boumediene v Bush* (2008)**

Week 7

Sept 28— FIRST PAPER DUE. Lecture only—Obama and the Gitmo question

Sept 30— Separation of powers: legislative and executive powers pp. 416-422; *Schechter Corp v United States* (1935) pp 424-430

Oct 2—*Industrial Union Department, ALF-CIO v American Petroleum Institute* (1980) pp 430-432; *INS v. Chadha* (1983) pp 433-442

Week 8

Oct 5—A Study in Modern Constitutional Questions—Savage, Charlie. 2006. "Bush Challenges Hundreds of Laws." *The Boston Globe*. April 30. Online Edition.

http://www.boston.com/news/nation/articles/2006/04/30/bush_challenges_hundreds_of_laws/

ABA Report by the Task Force on Signing Statements pp 6-19

http://www.abanet.org/op/signingstatements/Unts/aba_final_signing_statements_recommendation-report_7-24-06.pdf

Oct 7— The line-item veto online

<http://www.rules.house.gov/Archives/RS21991.pdf>; *Clinton v City of New York* (1998) pp 442- 453

Oct 9— Lecture only wrap up from Constitutional Law of Presidential Power

Week 9

Oct 12— Exam Review Day

Oct 14— MIDTERM EXAM

Oct 16—NO CLASS; Fall Break

STATE RELATIONSHIPS

Week 10

Oct 19—States' rights and sovereignty pp 681-688 and pp 728- 735

Oct 21—*Garcia v San Antonio Metropolitan Transit Authority* (1985) pp 739-752; *New York v United States* (2006) 752- 758

Oct. 23—State commerce power pp 691-696; *Southern Pacific Co v Arizona* (1945) pp 703- 706; *Bib v. Navajo Freight Lines, Inc.* (1959) pp 707-709

Week 11

Oct 26—History of the "Liberty of Contract" pp 1020-1032; *Slaughterhouse Cases* (1873) pp 1033-1038

Oct 28—*Lochner v New York* (1905) pp 1040- 1046

Oct 30— Erosion of *Lochner* decision; *Muller v Oregon* (1908) pp 1046- 1049; *West Coast Hotel Co. v. Parrish* (1937) pp 1049-1052

CONGRESSIONAL POWER

Week 12

Nov 2— Early Developments pp 542-553; *McCulloch v. Maryland* (1819) pp 553-563

Nov 4— *Gibbons v Ogden* (1824) pp 564-569

Nov 6— Nationalization of the Economy pp 569-575; *United States v E.C. Knight Co.* (1895) pp 576-581; *Hammer v Dagenhart* (1918) pp 581-585

Week 13

Nov 9— The Great Depression and the New Deal Crisis pp 585-589; *Home Building and Loan Association v Blaisbell* (1934) pp 1009-1014; *NLRB v Jones and Laughlin Steel Corporation* (1937) pp 591-597

Nov 11— *United States v Darby* (1941) pp 598-601; *Wickard v Fillburn* (1941) pp 602-605

Nov 13— Civil Rights and the Expansion of Congress' Commerce Powers pp 605- 607; *Heart of Atlanta Motel, Inc. v United States* (1964) pp 607- 610; *Katzenbach v McClung* pp 610- 614

Week 14

Nov 16-- Commerce Powers and the Rehnquist and Roberts Courts; *United States v Lopez* (1995) pp 614-626

Nov 18- *United States v Morrison* (2000) pp 642-654

Nov 20-- *Gonzales v Raich* (2005) pp 654-663; *Gonzales v Oregon* (2006) pp 663-667

VOTING AND ELECTIONS

Week 15

Nov 23—**SECOND PAPER DUE**; Lecture only— One Person, One Vote Principal and the Question of Race Based Gerrymandering (Voting Rights pp 833-834 recommended)

Nov 15—**NO CLASS; Thanksgiving Break**

Nov 27—**NO CLASS; Thanksgiving Break**

Week 16

Nov 30— *Shaw v Reno* (1993) pp 891-896; *Hunt v Cromartie* (2001) pp 897-903

Dec 2— *Bush v Gore* (2000) pp 915- 925

Dec 4—Exam Review

FINAL Exam—Friday December 11th 8-10:30am