

GOV2020: Con Law I

Fall 2018

Kanbar 107

T/Th 8.30 – 9.55

Professor Maron W. Sorenson

Office: 301B Dudley Coe

Office Hours: T/Th 2.30-3.30; W 11.00-12.00

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COURSE DESCRIPTION¹

This Course is designed to introduce students to constitutional law, with an emphasis on the U.S. Supreme Court's interpretation of Articles I, II, and III. This means that we will discuss how the nation's Court of last resort has helped shape the powers of and constraints on the three branches of our federal government. We will also discuss and analyze the development of law surrounding the separation of powers, the structure of federalism, congressional power over the commerce clause, and the creation and demise of the concept of substantive due process. This course is premised on the notion that such an understanding is best achieved by reading the primary sources that led to these goals – the opinions handed down by the U.S. Supreme Court. By successfully completing this course, you will be able to:

1. Identify the institutional powers of the three branches of government.
2. Understand the constraints that exist on each branch of government and how those constraints have been interpreted over the past 200 years.
3. Understand how to read, digest, and interpret U.S. Supreme Court decisions.
4. Appreciate how different viewpoints and interpretations of the constitution lead to different policy outcomes throughout the history of the U.S. and how these policy outcomes affect the citizenship, political values, and the norms of civic culture and government power.
5. Locate and ask questions about how the law, politics, and civic responsibility have changed across time.

Throughout the course, students will be asked to draw connections between disparate cases in American Constitutional history. The goal is not to memorize the specifics of every major case. Rather, the goal is to develop a deep understanding of the relationships among the many cases that we will be studying. In other words, students will develop a critical synthesis of American Constitutional Law.

REQUIRED TEXT:

- Lee, Epstein and Thomas Walker. 2016. *Constitutional Law for a Changing America: Institutional Powers and Constraints*. 9th Edition. Washington D.C.: CQ Press.

GRADES:

Grading Scale. The course will follow a standard grading scale:

97-100	A	87-89	B+	77-79	C+	67-69	D+
93-96	A	83-86	B	73-76	C	63-66	D
90-92	A-	80-82	B-	70-72	C-	60-62	D-

Class Participation [10% of course grade] Presence in class is a minimum requirement for class membership. You are expected to read and understand the assignments and contribute to class discussions. For some, constructive participation will mean speaking more than you are naturally inclined to do. For others constructive participation may mean speaking a bit less than usual and encouraging others to contribute. Participation in class might involve any of these things:

- Answering questions posed in class,
- Challenging or distinguishing points made by others,
- Offering textual evidence for or against a claim.

Daily Briefs [10% of course grade] Using the format learned in class, you will brief all cases on the syllabus and should show up to class with each brief in hard copy so that you can take notes directly onto it. If you prefer to brief by hand, you may do so as long as your handwriting is legible and briefs are on loose-leaf paper. Daily briefs are graded for completion – either you completed it or you did not – and will be collected at the end of every class

¹ Updated 8/30 to reflect current class expectations.

meeting where I will simply say, “Turn in brief X.” Daily briefs must be turned in at this time – late or emailed daily briefs will not be accepted. Each student gets two “free days” where not turning in a daily brief will not count against you.

These briefs are not essays and should be in outline form as covered in class. Briefs should be brief, generally one page except in extremely long opinions. Remember that the standard rules for academic honesty apply. You are encouraged to form study groups to discuss and ensure understanding of each case, but the final product should be your own.

In Class Brief [5% of course grade]. To ensure that you’re using class time to hone your briefing skills, you will write one timed brief in class that will be graded for accurateness.

Homework [25% of course grade]. Homework #1 (15%) will help prepare you for the midterm while homework #2 (10%) will foreshadow the final exam. More information will be circulated in class.

Midterm Exam [25% of the course grade]. The midterm exam will consist of a hypothetical set of case facts relevant to the first half of the semester. You will write a clerk’s memo summarizing the applicable case law and making a recommendation as to the legal reasoning and judgment.

Final Exam [25% of the course grade]. The final exam will test on your knowledge of key terms and themes or concepts and landmark cases so identified in class. You will **not** be expected to know dates or names of the voluminous cases in the text or mentioned in class. The exam will include essay questions.

CLASS EXPECTATIONS

Use Staples. I know this seems like an odd one, but staples are required in multi-page assignments. Any multi-page document that is not stapled with an actual staple will be treated like several assignments: I will grade only one.

Be Punctual. Tardy arrivals are distracting and disruptive; promptness is appreciated.

Practice Engagement. Come to class ready to discuss readings and engage in discussion. Since good discussions require a variety of voices, I expect all to be present both physically and mentally. ***Because of this, the use of electronic devices will not be allowed during lectures. Students should turn off and put away all electronic devices, including cell phones, tablets, and laptops.***

Have Integrity. One of the great goals of education is to learn to conduct oneself honorably in intellectual affairs. This means you are responsible for understanding and following Bowdoin’s Academic Honor Code. Plagiarism, the unacknowledged appropriation of another person’s words or ideas, is a serious academic offense. It is imperative that you hand in work that is your own, and that you cite or give credit to others whenever you draw from their work. If you have questions concerning plagiarism please ask me or consult [Bowdoin’s Academic Honor Code](#).

Communicate Clearly. Class announcements may be sent out via email, and you are therefore expected to use your Bowdoin email account, or to have email from that account forwarded to the account that you use on a regular basis. Also make sure to check the BB site on a regular basis in case of changes. I can be reached via email or during office hours and generally check my email three times a day: morning, early afternoon, and evening. I will do my best to respond to emails within 24 hours on weekdays and 36 hours on weekends. If I do not respond in that time period, please resend your email as it might have been inadvertently missed.

Read Actively. All of the readings listed in this syllabus are required. The assigned reading is fair game for the examinations, whether discussed in class or not. A few recommendations for how to go about reading the material for this course – be an active reader. Take notes, jot down questions that occur to you as you are reading, and highlight passages that you find particularly interesting/ troubling/ surprising/hard to swallow. Note similarities or inconsistencies across the various readings. Think about the implications of the readings for understanding judicial politics. Always bring the readings to class with you along with any notes you may have taken while reading them.

Be Open to Changes. I reserve the right to make reasonable alterations to the syllabus and the class policies during the semester. I will email you an updated syllabus as appropriate.

COURSE OUTLINE/READING ASSIGNMENTS

All of the readings below come from Epstein and Walker (listed as E&W). There are also a good number of cases discussed in the text that are not excerpted in the book. You will also want to be very familiar with these cases for your papers. ***Dates are listed on the syllabus, but they are subject to change.***

Part I. Understanding the U.S. Supreme Court September 4

- 9/4 Read Epstein & Walker pages 11-46
- 9/4 Read Articles I, II, and III of the U.S. Constitution

Part II. The Judiciary Sept. 4-13

A. Judicial Review

- 9/4 *Marbury v. Madison* (1803)
- 9/6 *Martin v. Hunter's Lessee* (1816)
- 9/6 *Eakin v. Raub* (1825)

B. Article III Constraints on Judicial Powers

- 9/11 *Ex parte McCordle* (1869)
- 9/11 *Baker v. Carr* (1962)
- 9/11 *Nixon v. U.S.* (1993)
- 9/13 *Flast v. Cohen* (1968)
- 9/13 *Hollingsworth v. Perry* (2013)

Part III. The Legislature Sept. 18-25

A. The Independence and Integrity of Congress

- 9/18 *Powell v. McCormack* (1969)
- 9/18 *U.S. Term Limits v. Thornton* (1995)
- 9/18 *Gravel v. U.S.* (1972)

B. The Sources and Scope of Legislative Power

- 9/20 *McCulloch v. Maryland* (1819)
- 9/20 *McGrain v. Daugherty* (1927)
- 9/25 *Watkins v. U.S.* (1957)
- 9/25 *Barenblatt v. U.S.* (1959)
- 9/25 *South Carolina v. Katzenbach* (1966)

Part IV. The Executive Sept 27-Oct 11

A. Article II Basic Considerations

- 9/27 *Bush v. Gore* (2000)

B. Defining the Contours of Executive Power

- 9/27 *In re Neagle* (1890)

C. Domestic Powers

- 10/2 *Clinton v. City of New York* (1998)
- 10/2 *Morrison v. Olson* (1988)
- 10/2 *NLRB v. Canning* (2014)
- 10/4 *Myers v. U.S.* (1926)
- 10/4 *Humphrey's Executor v. U.S.* (1935)
- 10/4 *U.S. v. Nixon* (1974)
- 10/9 **FALL BREAK**
- 10/11 *Mississippi v. Johnson* (1867)
- 10/11 *Nixon v. Fitzgerald* (1982)
- 10/11 *Clinton v. Jones* (1997)

Part V. The Separation of Powers Oct 16-23

- A. Domestic Powers
 - 10/16 *Mistretta v. U.S.* (1989)
 - 10/16 *INS v. Chadha* (1983)
 - 10/16 *Bowsher v. Synar* (1986)
- B. Powers Over Foreign Affairs
 - 10/18 *The Prize Cases* (1863)
 - 10/18 *Ex parte Milligan* (1866)
 - 10/18 *Korematsu v. U.S.* (1944)
 - 10/23 *Youngstown Sheet and Tube Co. v. Sawyer* (1952)
 - 10/23 *Dames & Moore v. Regan* (1981)
 - 10/23 *Hamdi v. Rumsfeld* (2004)

MIDTERM EXAM – 10/25

Part VI. Federalism Oct. 30- Nov. 1

- A. The Development of Federalist Principles
 - 10/30 *McCulloch v. Maryland* (1819) – again, but different focus
 - 10/30 *Scott v. Sandford* (1857)
 - 10/30 *New York v. U.S.* (1992)
- B. National Preemption of State Laws
 - 11/1 *State of Missouri v. Holland* (1920)
 - 11/1 *Crosby v. National Foreign Trade Council* (2000)
 - 11/1 *Arizona v. U.S.* (2012)

Part VII. The Commerce Clause Nov 6-15

- A. Foundations and Defining Interstate Commerce
 - 11/6 *Gibbons v. Ogden* (1824)
 - 11/6 *Stafford v. Wallace* (1922)
 - 11/6 *Hammer v. Dagenhart* (1918)
- B. The Supreme Court and the New Deal
 - 11/8 *A.L.A. Schechter Poultry v. U.S.* (1935)
 - 11/8 *NLRB v. Jones & Laughlin Steel Corp.* (1937)
 - 11/8 *Wickard v. Filburn* (1942)
- C. Era of Expansive Commerce Clause Jurisprudence
 - 11/13 *Heart of Atlanta Motel v. U.S.* (1964)
- D. Limitations on the Commerce Clause
 - 11/13 *U.S. v. Lopez* (1995)
 - 11/13 *U.S. v. Morrison* (2000)
 - 11/15 *Gonzalez v. Raich* (2005)
 - 11/15 *NFIB v. Sebelius* (2012)

Part VIII. Economic Substantive Due Process Nov 20-29

- A. The Development of Substantive Due Process
 - 11/20 *The Slaughterhouse Cases* (1873)
- B. The Roller Coaster Ride of Substantive Due Process
 - 11/20 *Lochner v. New York* (1905)
 - 11/20 *Adkins v. Children's Hospital* (1923)
- C. The Decline of Substantive Due Process
 - 11/27 *Nebbia v. New York* (1934)
 - 11/27 *West Coast Hotel v. Parrish* (1937)
 - 11/27 *Williamson v. Lee Optical Co.* (1955)
- D. Contemporary Relevance
 - 11/29 *Caperton v. A.T. Massey Coal Co. Inc.* (2009)

Part IX. The Takings Clause Nov 29- Dec 6

- A. Protecting Private Property
 - 11/29 *U.S. v. Causby* (1946)
 - 11/29 *Penn CTC v. City of New York* (1978)
 - 12/4 *Nollan v. California Coastal Commission* (1987)
 - 12/4 *Lucas vs. South Carolina Coastal Council* (1992)
 - 12/4 *Horne v. Dept. of Agriculture* (2015)
- B. Public Use
 - 12/6 *Berman v. Parker* (1954)
 - 12/6 *Hawaii Housing v. Midkiff* (1984)
 - 12/6 *Kelo v. City of New London* (2005)

FINAL EXAM 12/16 from 8:30-11:30