

"I live within the Constitution, so call me dull."

Manhattan Murder Mystery, Woody Allen

CONSTITUTIONAL LAW AND POLITICS is an introduction to the role of the United States Supreme Court as a policy-making institution in American politics. It is also an introduction to various models of constitutional interpretation.

The Court as a policy-making institution and the models of Constitutional interpretation provide the context within which we will study how law gives shape to, and is shaped by, struggles over the development of the institutional structure of the polity, governmental powers, and citizens' rights.

The focal point for this study of the law is "constitutionalism." Constitutionalism, as generally conceived in the United States, is the idea that there is a permanent and fundamental rule of law--a written constitution-- that is supreme over all political authorities and citizens. In this course we will focus on facets of 18th-20th constitutionalism concerned with the organization of, and the limits on, governmental power. A dominant feature of this facet of constitutionalism is that "each of the coordinate departments [is] responsible for applying and interpreting the provisions of the constitutional document that defined or regulated the performance of its duties and responsibilities" (Herman Belz, *THE OXFORD COMPANION TO THE SUPREME COURT*, 1992: 192).

There are three other features of constitutionalism that are central to our study of the law:

1. Federalism-- The idea that there is a constitutionally guaranteed distribution of governmental duties and powers between a national (Federal) government and sub-national (State and local) governments.
2. Separation of powers-- The idea that there is a constitutionally guaranteed distribution of governmental duties and powers between the Executive, Legislative, and Judicial branches of the national government. (This course focuses on the latter two branches of government.)
3. Liberty-- The idea that there are principles of "freedom" which underpin conceptions of the power of governments and the rights of citizens.

General Goals

The first goal of this course is not controversial: it is to challenge you to become more responsible about how you read, think, talk, and write about law and politics. The second goal is controversial: it is to encourage you to be as skeptical as you can be about the idea that the Constitution, as interpreted

by judges, provides "right" answers or resolutions to complex political and constitutional conflicts.

PEDAGOGY

Classroom instruction is a mix of student questions, assigned student presentations of cases, lectures, and instructor directed questions to the class.

To prepare for class you must read the cases and the assigned materials very carefully. The more carefully you prepare for, and participate in, class discussions (as difficult as that may be at first), the easier and more interesting it becomes to read, think, talk, and write about law and politics.

At the beginning of each class I will ask: "Are there any questions?" This is your opportunity to raise questions that you have about the material or previous class discussions. Please take advantage of this opportunity.

In addition, the course's Blackboard site, titled "Are there any questions?" provides opportunities for all of us to correspond about the briefs (described below), lectures and class discussions, assigned materials, examinations, and your general observations about constitutional law and politics. Please review the site for instructions about its use.

CLASS RESPONSIBILITIES

You are *required* to "brief" each decision before class. (Attached to the syllabus is a handout describing this process.)

You are encouraged to work in small groups on these briefs. I recommend that groups not meet until each member of the group has done his or her own work.

On a rotating basis, all students will be required to present sections of their briefs in class.

OFFICE HOURS

There is a sign-up sheet for office hours posted on my door. I do not make appointments via e-mail.

Please take full advantage of these hours to ask for help and to discuss course materials. Students who regularly take advantage of office hours inevitably do better in the course.

GRADES

Class participation (including office hours discussions and participation in "Are There Any Questions") 15%

First take home examination 10%

Second take home examination 15%

Third take home examination 20%

N.B.: Each examination has greater weight than the previous examination; as the semester progresses, it is expected that your performance will improve, so later, stronger, work will compensate for any earlier, weaker, performances.

Examinations must be in proper composition form.

Ah, like you know what I kinda meen, okay? Like, okay, Even tho this stuff gets in the way of your creativity; grosz speling, composchional erors and that includes not double spacing or cute font sizes; punctuation, or not numbering the pages, or not including a footnotes--- and and is an grammatical errors whill be resulted in your assignment being returned, unread with the grade of "F."

Put a cover page on the examination with your name and box number; your name should not appear anyplace else on the examination. Examinations that do not conform to this rule will be returned with a grade of "F."

For this course, embed citations in the text as follows:

Case Name (*italics*):
(*Marbury v. Madison*: 48)

Other materials:
(Author: page number)

(Mensch: page number)

Any non-course sources cited used should be indicated in a bibliography.

Always run a hard copy of your work on the computer after each work session. If the computer should malfunction, you *must* have a hard copy of your work to substantiate a request for an extension.

No other extensions will be granted, ever, except for *documented* medical reasons or *exceptional* personal circumstances. I try not to be unreasonable about these things. But forget about going to the Health Center--complaining of a stomach ache, or with a hang over, or with a controlled substance flash back, or because you or your roommate broke up with an Internet companion and you were up all night looking for a new companion--in order to get the Center to send me a note that

says that you visited the Center and that you will not be attending class.

Final Examination (Take Home: Due as scheduled)
40%

The textbook for this course is CONSTITUTIONAL LAW, CASES IN CONTEXT, VOL I., Foster & Lesson. In addition, as noted, there are materials on 219 E-RESERVE.

SCHEDULE OF READINGS

N.B.: Every Sunday, you are required to access the Pioneer Web site for course and read any supplementary materials posted there.

August 30	NO CLASS
September 4	CONSTITUTIONAL LAW (Foster & Leeson), "Understanding the Supreme Court," 1-3, 5-6 U.S. Constitution Article I (Sec. 1, Sec. 8-9) Article II (Sec. 2) Article III (Sec. 1-2, Article IV (Sec. 2-3) Article V Article VI (second paragraph) Amendments IX and X
September 6	Re-read Constitution selections E-RESERVE: The Changing Supreme Court (Hensley, Smith, Baugh), "Three Approaches to the Study of Civil Rights and Liberties," 14-19
September 11	E-RESERVE: HOW TO READ THE CONSTITUTION (Wolfe): 3-10, 11-12, 16
September 13	NO CLASS
September 18	<u>Establishing the Power of Judicial Review</u> <i>Marbury v. Madison</i> (1803), 40-51
September 20	Continued
September 25	<u>THE FIRST ERA</u> , CONSTITUTIONAL LAW: "Understanding the Supreme Court," 7 PACKET: POLITICS OF LAW: "The History of Mainstream Legal Thought," (Mensch), 23-28

- November 8 E-RESERVE: "From Legal Formalism to New Deal Crisis" (O'Brien), 521-528
- E-RESERVE: THE POLITICS OF LAW: "The History of Mainstream Legal Thought," (Mensch), 28-32
- November 13 From Legal Formalism to New Deal Crisis
U.S. v. E.C. Knight Company (1895), 244-252
- E-RESERVE: Racial Discrimination and State Action
Plessy v. Ferguson (1896), 514-524
- November 15 Economic Rights, State Regulation, and American Economic Development
Lochner v. New York (1905), 796-806
- THE POLITICS OF LAW: "The History of Mainstream Legal Thought," (Mensch), 32-34
- Muller v. Oregon*, 806-808
- Third Take Home Examination: November 19, 5:00PM.
- November 20 Political Rights, Federal Regulation, and American Political Development
U.S. Constitution, First Amendment
- E-RESERVE: *Schenck v. US* (1919), 167-171
Gitlow v. NY (1925), 171-177
- November 27 Economic Rights, State Regulation, and American Economic Development
West Coast Hotel v. Parrish (1937), 836-846
- U.S. v. Carolene Products* (1938), 309-310
- November 29 CONSTITUTIONAL LAW: "Understanding the Supreme Court," THE THIRD ERA, 8-9
- Congressional Power
U.S. v. Darby (1941), 302-310
- December 4 CONSTITUTIONAL LAW: "Understanding the Supreme Court," THE FOURTH ERA, 9
- E-RESERVE: Racial Discrimination and State Action
Brown v. Board of Education I & II, (1954-55) 525-536