

Political Science 4135
Autumn 2013

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Office hours: T & Th 4:00-5:00,
and by appointment

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 any newspaper 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, 2011, Eighth edition, is the casebook. I have placed an exclusive order for this book at OSU/Barnes & Noble. Since all of the reading comes out of this book, you should purchase it as soon as possible. We will not use materials from the book's website, so you can purchase a used version of the 8th edition if you wish. Since we often refer to the casebook in class, you will want to bring *Constitutional Law* with you every day. For class 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.

Learning goals in this course: understanding the historical context of constitutional cases and development, the political roles of the Supreme Court, approaches to constitutional interpretation and their application in cases, the development and change in constitutional doctrine, and the relationship of the Court to the political branches.

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 two difficult examinations.

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

Attendance	10
First Mid-Term	20
Second Mid-Term	30
Final Exam	40

Details of testing: The examinations will consist of multiple-choice items and possibly but not likely short-answers. I will give you a clearer idea of the nature of the questions before the First Mid-term. During the examination, you will be permitted to have three (3) 8 x 11 pages of notes in front of you, "cheat sheets," as it were. The number of the "cheat sheets" permitted on the final will depend on the number of cases we cover after the mid-terms.

Dates of Examinations: The mid-terms are scheduled for October 3rd and November 7th, at the regular time and place. We will administer the final examination on Monday, December 9th, 2:00-3:45 p.m. Please note these dates on your calendars and plan to be there.

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

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

Academic Misconduct: It is the responsibility of the Committee on Academic Misconduct to investigate or establish procedures for the investigation of all reported cases of student academic misconduct. The term “academic misconduct” includes all forms of student academic misconduct wherever committed; illustrated by, but not limited to, cases of plagiarism and dishonest practices in connection with examinations. Instructors shall report all instances of alleged academic misconduct to the committee (Faculty Rule 3335-5-487). See also Code of Student Conduct on Student Affairs’ website.

Disabilities: Students with disabilities that have been certified by the Office for Disability Services will be appropriately accommodated, and should inform the instructor as soon as possible of their needs. The Office for Disability Services is located in 150 Pomerene Hall, 1760 Neil Avenue; telephone 292-3307, TDD 292-0901; <http://www.ods.ohio-state.edu/>.

You will run into strange words from time to time in this course. Our casebook has a glossary of terms. With Google and other search programs these days, of course, all you need do is to enter a term and definition and you will see a definition. If you are old-fashioned, you may want to 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 I 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.

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