

Political Science 220  
American Constitutional Law  
Fall 2007

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**Office Hours:** M, T, W, TH 1:00-2:00 and by appointment

## **Course Description**

This course is an introduction to basic issues and principles that have provided the institutional structure for the American republic since 1789. This course includes an examination of the political and philosophical values which guided the framers of the Constitution and which are embodied in its provisions. The class will also seek to understand the symbolic power that has accrued to the Constitution and the role this power has played in efforts to resolve political conflicts within the American polity. The course endeavors to do this both through a review of the fundamental legal and political features of the judicial process and through a substantive examination of several key areas of constitutional doctrine. The specific areas of concern in this course include: (1) The nature of judicial review and judicial power, (2) The separation of powers and the powers of the President and Congress, (3) Federalism with particular concern for implications of the Tenth and Eleventh Amendments regulation, (4) Property rights under the federal constitution and (5) Voting rights and electoral politics.

## **Attendance**

Students are expected to attend all classes. Absences due to participation in legitimate Moravian College extracurricular activities, a doctor's excuse or notification by the Dean of Students Office will allow a student to be excused from class. All other excuses are subject to the instructor's discretion.

## **Required Books**

David O'Brien, **Constitutional Law and Politics: Volume 1 – Struggles for Power and Political Accountability**, sixth edition, (New York: W.W. Norton, 2005)

David O'Brien, **Supreme Court Watch 2006**, (New York: W.W. Norton, 2007)

Robert Pallitto and William Weaver, **Presidential Secrecy and the Law**, (Baltimore, Md: The Johns Hopkins University Press, 2007)

## Evaluation of the Students Work

Quizzes (6 quizzes, 5 points each)	30 points
Final	100 points
Hypothetical case	50 points
Book review	50 points
Case Briefs (3, 10 points each)	30 points
Class participation and instructor evaluation	40 points

## Final Exam

The final exam will consist of 100 statements referring to cases read for the course. Students will be required to identify the case to which the statement refers. A list of cases will be provided to students in advance of the final.

## Quizzes

There will be six unannounced multiple choice quizzes in class. These quizzes will be worth 5 points each and will focus on the reading assignments for the day on which the quiz will be given. Make up quizzes will be permitted with a doctor's excuse for a missed class.

## Case Briefs

Each student will outline or "brief" three cases. The student may choose any three of the cases listed below and submit the brief by the date indicated for the case in question. To facilitate successful completion of this assignment, students will have the opportunity to revise the brief for Baker v Carr if they choose to start with that case. **These briefs should be formatted according to the outline provided in the O'Brien text on pp. 1035 and 1036** and are due on the dates listed below.

<b>Baker v Carr</b>	(9/11)
<b>Hamdi v Rumsfeld</b>	(9/27)
<b>United States v Lopez</b>	(11/1)
<b>Seminole Tribe of Florida v Florida</b>	(11/8)
<b>Clinton v City of New York</b>	(11/20)

## **Book Review**

Each student will write a review of Robert Pallitto and William Weaver, **Presidential Secrecy and the Law**. The review is due **October 15**. The review should be at least five to seven pages typewritten. The review should include the following:

- A statement of Pallitto and Weaver's principal thesis
- A review of the topics that the authors present to argue this thesis
- A discussion of the evidence that Pallitto and Weaver offer to support the thesis
- A statement to someone who has not read the book as to what they might benefit from knowing about the book before they begin to read it (e.g. its strengths or weaknesses, its contemporary relevance)

## **Hypothetical Case Analysis**

Each student will write a 6-10 page analysis of a hypothetical case concerning regulation of economic activity and issues of federalism. The "hypothetical" will be distributed in class and consist of a set of facts raising constitutional questions about an area of concern in the course. To complete this assignment, each student will write an argument indicating how they believe the legal issues are to be resolved based on constitutional doctrine and precedent. The materials in the text will be the most basic source for these briefs, but additional research may be useful. Due: **October 29**.

## **Class Participation and Instructor Evaluation**

Students are expected to participate in class. This includes being prepared to answer questions pertaining to all cases assigned for class reading. Students should be ready to identify the facts of the case, the constitutional provisions applied or interpreted by the Court, the legal questions raised in regard to those provisions, the holding in the case (who wins), and the rationale for the majority opinion. **A RECORD OF CLASS PARTICIPATION IN DISCUSSION OF CASES WILL BE KEPT BY THE INSTRUCTOR. WHILE DISCUSSION WILL FREQUENTLY RELY ON VOLUNTEERS, STUDENTS SHOULD BE PREPARED TO RESPOND WHEN CALLED UPON.**

## Course Outline, Reading Assignments and Cases

{Please note that all the reading assigned for a given day is to be completed on the first date listed for each topic in the outline}

### I The U.S. Constitution: Philosophy and Structure (8/30)

**Reading:** Federalist 10, 51 and 78

#### Copies of these texts can be found at:

[www.yale.edu/lawweb/avalon/federal/fed.htm](http://www.yale.edu/lawweb/avalon/federal/fed.htm)

<http://www.foundingfathers.info/federalistpapers/fedindex.htm>

### II Judicial Power and Process

#### A. Establishing judicial review (9/4 and 9/6)

**Reading:** O'Brien, pp. 23-40, 46-59, 765-774

Cases for discussion: **Marbury v Madison**

**Martin v Hunter's Lessee**

**Cooper v Aaron**

#### B. Judicial power and democratic accountability (9/6)

**Reading:** O'Brien, pp. 67-96

#### C. Judicial process, reasoning and the limits of judicial power (9/11 and 9/13)

**Reading:** O'Brien, pp. 104-126, 145-157

Cases for discussion: **Baker v Carr**

### III Separation of Powers: Foreign Affairs

#### A. Inherent powers and Congress (9/18 and 9/20)

**Reading:** O'Brien, pp. 220-239, 310-339

Cases for discussion: **United States v Curtiss-Wright**

**Youngstown Sheet & Tube v Sawyer**

**New York Times v United States**

**Dames & Moore v Regan**

**Sale v Haitian Centers Council**

#### B. Treaties and executive agreements (9/25)

**Reading:** O'Brien, pp. 239-253, 157-161

Cases for discussion: **Missouri v Holland**

**United States v Pink**

**Goldwater v Carter**

**United States v Alvarez-Machain**

C. War and emergency powers (9/27 and 10/2)

**Reading:** O'Brien, pp. 254-309; **Supreme Court Watch 2006**, pp. 10-35

Cases for discussion: **The Prize Cases**

**Ex parte Milligan**

**Korematsu v United States**

**Rasul v Bush**

**Hamdi v Rumsfeld**

**Hamdan v Rumsfeld**

D. Secrecy, Accountability and Immunities (10/4 and 10/11)

**Reading:** O'Brien, pp. 425-454; Pallitto and Weaver, **entire**

Cases for discussion: **United States v Nixon**

**Clinton v Jones**

IV Legislative Powers of Congress and the Regulation of Economic Activity

A. Establishing congressional power and the commerce clause (10/16)

**Reading:** O'Brien, pp. 516-544, 659-664

Cases for discussion: **McCulloch v Maryland**

**Gibbons v Ogden**

**Cooley v Board of Wardens**

B. Economic Regulation and the Emerging National Economy: Substantive Due Process and the Commerce/Manufacturing Distinction (10/18 and 10/23)

**Reading:** O'Brien, pp. 980-1006, 544-558

Cases for discussion: **The Slaughterhouse Cases**

**Munn v Illinois**

**Lochner v New York**

**United States v E.C. Knight**

**Hammer v Dagenhart**

C. The commerce power and nationalization of the economy (10/23 and 10/25)

**Reading:** O'Brien, pp. 1006-1011, 559-579

Cases for discussion: **Muller v Oregon**

**West Coast Hotel v Parrish**

**NLRB v Jones & Laughlin**

**United States v Darby**

**Wickard v Filburn**

D. Post New Deal applications of congressional power (10/30)  
**Reading:** O'Brien, pp. 579-588, 1012-1014, 638-641

Cases for discussion: **Heart of Atlanta Motel v United States**  
**Katzenbach v McClung**  
**Lincoln Federal Labor Union v Northwestern Iron & Metal Co.**  
**South Dakota v Dole**

E. Curbing congressional power (11/1)  
**Reading:** O'Brien, pp. 588-628; **Supreme Court Watch 2006**, pp. 38-55

Cases for discussion: **United States v Lopez**  
**Reno v Condon**  
**City of Boerne v Flores**  
**United States v Morrison**  
**Gonzales v Raich**  
**Gonzales v Oregon**

V The Federal System and Limits on National Power

A. State powers under the commerce clause (11/6)  
**Reading:** O'Brien, pp. 652-688; **Supreme Court Watch 2006**, pp. 90-100

Cases for discussion: **Southern Pacific v Arizona**  
**Bibb v Navajo Freight**  
**Maine v Taylor**  
**Pennsylvania v Nelson**  
**Kelo v City of New London, Ct.**

B. The 10<sup>th</sup> and 11<sup>th</sup> Amendments as limits on federal power (11/8 and 11/13)  
**Reading:** O'Brien, pp. 689-758; **Supreme Court Watch 2006**, pp. 56-58

Cases for discussion: **Garcia v San Antonio Metropolitan Transit Authority**  
**Printz v United States**  
**Mack v United States**  
**Seminole Tribe of Florida v Florida**  
**Alden v Maine**  
**Nevada Dept of Human Resources v Hibbs**

VI Separation of Powers: Domestic Affairs

A. Appointment and Removal (11/15)

**Reading:** O'Brien, pp. 340-386

Cases for discussion: **Myers v United States**

**Humphrey's Executor v United States**

**Bowsher v Synar**

**Morrison v Olson**

B. Delegation of authority and legislative powers and (11/20)

**Reading:** O'Brien, pp. 387-424; **Supreme Court Watch 2006**, pp. 36-37

Cases for discussion: **Schechter Poultry Corporation v United States**

**Industrial Union Dept., AFL-CIO v Am. Petroleum Institute**

**Immigration and Naturalization Service v Chadha**

**Clinton v City of New York**

VI Voting rights and elections

A. Voting rights and apportionment (11/27 and 11/29)

**Reading:** O'Brien, pp. 823-874; **Supreme Court Watch 2006**, pp. 59-73

Cases for discussion: **Gomillion v Lightfoot**

**Wesberry v Sanders**

**Reynolds v Sims**

**Vieth v Jubelir**

**Shaw v Reno**

**Hunt v Cromartie**

B. Campaigns and elections (12/4)

**Reading:** O'Brien, pp. 875-903; **Supreme Court Watch 2006**, pp. 74-89

Cases for discussion: **Bush v Gore**

**Buckley v Valeo**