

Political Science 220
American Constitutional Law
Fall 2011

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Office Hours: T – 1:00-2:00, W 9:00-10:00, Th 10:30 – 11:30 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 power that has accrued to the United States Supreme Court 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 the Congress, (3) Federalism with particular concern for implications of the Tenth and Eleventh Amendments regulation, (4) Property rights under the federal constitution and (5) the role of the Supreme Court in contemporary 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.

Academic Honesty

All students should be aware of their obligations under the Academic Honesty Policy published in the *Moravian College Student Handbook 2011-2012*. A copy of that document can be found at <http://www.moravian.edu/studentLife/handbook/academic/academic2.html>.

Required Books

David O'Brien, **Constitutional Law and Politics: Volume 1 – Struggles for Power and Political Accountability**, eighth edition, (New York: W.W. Norton, 2011)

Evaluation of the Students Work

Quizzes (10 quizzes, 5 points each)	50 points
Final	50 points
Take home essays (3)	100 points
Case Briefs (2, 10 points each)	20 points
Class participation and instructor evaluation	30 points

Final Exam

The final exam will consist of 50 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 ten 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 verification of the situations that permit an excused absence as described above.

Take Home Essays

Students will complete three take home essays. Everyone will complete essay number one. It should be 5 to 7 typewritten pages. It will be worth 50 points. The student will choose which two of the other three essays that he or she prefers to do. Those essays should be 3 to 5 pages typewritten. These essays will be worth 25 points each. Proper citation is required. **The essays will be due on the date noted below.**

Evaluation of the essays will be based on x criteria:

- Clear and logical presentation of the material
- Use of precedent and/or evidence of the reading
- Quality of the writing and adherence to conventions of grammar and citation

Essays:

1. What constitutional powers are at issue in relation to Patient Protection and Affordable Care Act of 2010? Citing useful precedent, identify and explain the constitutional doctrines that can be used to justify the constitutionality of the law and those that can be used to call the constitutionality of the law into question. **(Due date 11/3)**
2. Rick Perry, Texas governor and a candidate for the Republican Party presidential nomination, has proposed amending the U.S. Constitution to abolish life tenure

for federal judges. Write an argument in support of this proposal. Write an argument opposing this proposal. **(Due date 9/20)**

3. In the *Medellin v Texas* case, the U.S. Supreme Court's ruling has implications for both the separation of powers and the institutions of federalism. What are they? **(Due date 11/17)**
4. Recently, President Obama declared that he could authorize the bombing of targets in Libya without congressional approval. This action has been cast as consistent with the rise of the practice of "presidential war." Some have argued that the President's actions violated the War Powers Act. Does Congress need the War Powers Act or something like it to control presidential war powers? **(Due date 12/1)**

Case Briefs

Each student will outline or "brief" two cases. The student may choose any two 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. 1101-1102** are due on the dates listed below.

	Due date
Baker v Carr	9/8
Gibbons v Ogden	9/20
United States v Darby	9/29
South Dakota v Dole	10/6
Gonzales v Raich	10/13
Alden v Maine	10/25
Rasul v Bush	11/15
United States v Nixon	11/22

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, and the rationale for the majority opinion. A record of class participation will be kept by the instructor and, while discussion will frequently depend on volunteers, student should be prepared to respond when called upon.

Course Outline, Reading Assignments and Cases

Note: Assigned readings are to be completed on the first date listed for each topic in the outline

- I. Introduction (8/29)
- II. The U.S. Constitution: Philosophy and Structure (9/1)
Reading: Federalist 10, 51 and 78
Copies of these texts can be found at:
http://avalon.law.yale.edu/subject_menus/fed.asp
<http://www.foundingfathers.info/federalistpapers/fedindex.htm>
- III. Judicial Power, Process and Politics (9/6-9/13)
 - A. Establishing judicial review (9/6)
Reading: O'Brien, pp. 27-40, 45-55, 800-812
Cases for discussion:
 - **Marbury v Madison**
 - **Martin v Hunter's Lessee**
 - **Cooper v Aaron**
 - B. The nature of judicial power and process (9/8)
Reading: O'Brien, pp. 149-160
Case for discussion: **Baker v Carr**
 - C. Judicial power and democratic politics (9/13)
Reading: O'Brien, pp. 40-44, 55-62, 189-204
- IV. Legislative Powers of Congress and Economic Regulation (9/20-10/18)
 - A. Establishing congressional power: the commerce clause (9/20)
Reading: O'Brien, pp. 548-573, 698-703
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 (9/22 and 9/27)
Reading: O'Brien, pp. 1038-1064, 573-589, 434-439
Cases for discussion:
 - **The Slaughterhouse Cases**
 - **Munn v Illinois**
 - **Lochner v New York**
 - **United States v E.C. Knight**

- **Hammer v Dagenhart**
- **Schechter Poultry Corporation v United States**

C. The commerce power, economic regulation and the nationalization of the economy (9/29 and 10/4)

Reading: O'Brien, pp. 1064-1070, 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 (10/6)

Reading: O'Brien, pp. 609-618, 677-680

Cases for discussion:

- **Heart of Atlanta Motel v United States**
- **Katzenbach v McClung**
- **South Dakota v Dole**

E. Curbing congressional power (10/13 and 10/18)

Reading: O'Brien, pp. 618-669, 439-442

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

V. The Federal System and Limits on National Power (10/20-11/1)

A. State powers under the commerce clause (10/20)

Reading: O'Brien, pp. 703-715

Cases for discussion:

- **Southern Pacific v Arizona**
- **Bibb v Navajo Freight**
- **Maine v Taylor**
- **Pennsylvania v Nelson**

B. The 10th and 11th Amendments as limits on federal power (10/25-11/1)

Reading: O'Brien, pp. 728-795

Cases for discussion:

- **Garcia v San Antonio MTA**

- **New York v United States**
- **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: Foreign Affairs (11/3-11/17)

A. Treaties and Executive Agreements (11/3)

Reading: O'Brien, pp. 248-273, 160-164

Cases for discussion:

- **Missouri v Holland**
- **United States v Pink**
- **Goldwater v Carter**
- **United States v Alvarez-Machain**
- **Medellin v Texas**

B. Inherent powers and Congress (11/8-11/10)

Reading: O'Brien, pp. 239-248, 346-379

Cases for discussion:

- **United States v Curtiss-Wright**
- **Youngstown Sheet & Tube v Sawyer**
- **New York Times v United States**
- **Dames & Moore v Regan**

C. Commander-in-Chief, War and Emergency Powers (11/15-11/17)

Reading: O'Brien, pp. 264-333

Cases for discussion:

- **The Prize Cases**
- **Ex parte Milligan**
- **Korematsu v United States**
- **Rasul v Bush**
- **Boumediene v Bush**

VII. Presidential Powers as Chief Executive (11/22-11/29)

A. Appointment and Removal (11/22)

Reading: O'Brien, pp. 385-399

Cases for discussion:

- **Myers v United States**
- **Humphrey's Executor v United States**

B. Presidential prerogatives, discretion and accountability (11/22 and 11/29)

Reading: O'Brien, pp. 442-463, 463-487

Cases for discussion:

- **Immigration and Naturalization Service v Chadha**
- **Clinton v City of New York**
- **United States v Nixon**
- **Clinton v Jones**

VIII. Voting rights and elections (12/1)

A. Campaigns and Elections

Reading: O'Brien, pp. 868-874, 918-939, 968-979

Cases for discussion:

- **Wesberry v Sanders**
- **Bush v Gore**
- **Buckley v Valeo**
- **Citizens United v Federal Election Commission**