

Political Science 220  
American Constitutional Law  
Fall 2015

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**Office Hours:** M, W 1:30 to 2:30; T, Th 9:00 to 10:00 and by appointment

## **Course Description**

This course is an introduction to basic issues and principles that provide the institutional structure for the American republic. 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 features of the judicial process and through a substantive examination of key areas of constitutional doctrine including: (1) The nature of judicial review and judicial power, (2) Congressional authority regarding economic activity, taxing and spending, (3) property rights and economic regulation, (4) Federalism under the Tenth and Eleventh Amendments, (5) the separation of powers and Presidential authority, particularly in relation to foreign affairs, war and emergencies (6) 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 obligations under the Academic Honesty Policy published in the *Moravian College Student Handbook*. A copy of that document can be found at <http://www.moravian.edu/studentLife/handbook/academic/academic2.html>.

## **Learning Disability accommodations**

Students who wish to request accommodations in this class for a disability should contact Elaine Mara, Assistant Director of Learning Services for academic and disability support at the lower level of Monocacy Hall, or by calling 610-861-1401. Accommodations cannot be provided until authorization is received from the Academic Support Center.

## **Required Books**

David O'Brien, **Constitutional Law and Politics: Volume 1 – Struggles for Power and Political Accountability**, ninth edition, (New York: W.W. Norton, 2014)

## Evaluation of the Students Work

The student's final grade will be based on a 300 point system:

Quizzes (10 quizzes, 5 points each)	50 points
Case Briefs (3, 20 points each)	60 points
Take home essay	40 points
Hypothetical	80 points
Final	50 points
Class participation and instructor evaluation	20 points

### Quizzes

There will be 10 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.

### Case Briefs

Each student will outline or "brief" 3 cases. Every student will complete an outline for Baker v Carr. Additionally, students will outline one of the other cases listed below. Students will have the opportunity to revise the brief for Baker v Carr. **Briefs should be formatted according to the outline provided in the O'Brien text on pp. 1109-1110.** The briefs are due on the date for which the case is assigned to be read.

**NLRB v Jones & Laughlin**

**Heart of Atlanta Motel v United States**

**Youngstown Sheet & Tube v Sawyer**

**Citizens United v Federal Election Commission**

### Take Home Essay

Students will provide a written response to the following prompt:

***Does the judiciary in the U.S. serve the values of democracy?***

This assignment will be completed in three steps:

- **Due 9/8**, students will write an initial draft response to the prompt. The initial response should be between 250 and 500 words. The draft response will be read and comments will be provided but the submitted draft will not receive a grade. Failure to submit the response on time will result in a penalty on the final grade, however.
- **Due 9/22**, students will submit a revised draft that is expected to incorporate course materials assigned between the due date of the initial draft and 9/15. The revised draft should be between 500 and 750 words. This draft will be graded.

- **Due 12/8**, students can submit a final revision of the graded draft to incorporate the course materials covered since the grade draft was submitted. Submission of these revisions is optional. Students who submit additional revisions can earn up to 5 points that will be assigned to the final exam grade.

## Hypothetical Case Analysis

Each student will write a 6-10 page constitutional law analysis of the hypothetical case presented at the end of the syllabus. To complete this assignment, each student will identify what he or she believes to be the key constitutional issues raised in the case and present an argument indicating how he or she believe those 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 can be used. Due: **November 24**

## 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.

## Class Participation and Instructor Evaluation

Students are expected to participate in class and be 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.

## 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 (9/1)
- II. The U.S. Constitution: Philosophy and Structure (9/3)  
**Reading:** *Federalist* 10 and 51  
Copies of these texts can be found at:  
[http://avalon.law.yale.edu/subject\\_menus/fed.asp](http://avalon.law.yale.edu/subject_menus/fed.asp)  
<http://www.foundingfathers.info/federalistpapers/fedindex.htm>
- III. Judicial Power, Process and Politics
  - A. Establishing judicial review (9/8)  
**Reading:** O'Brien, pp. 45-55, 813-826  
Cases for discussion:
    - **Marbury v Madison**

- **Martin v Hunter's Lessee**
- **Cooper v Aaron**

B. The nature of judicial power and process (9/10)

**Reading:** O'Brien, pp. 107-135; 162-173

Case for discussion:

- **Baker v Carr**

C. Judicial power, judicial activism and democratic politics (9/15)

**Reading:** Federalist 78

Text can be found at:

[http://avalon.law.yale.edu/subject\\_menus/fed.asp](http://avalon.law.yale.edu/subject_menus/fed.asp)

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

IV. Legislative Powers of Congress

A. Establishing congressional power (9/17)

**Reading:** O'Brien, pp. 546-567, 706-710

Cases for discussion:

- **McCulloch v Maryland**
- **Gibbons v Ogden**
- **Cooley v Board of Wardens**

B. The commerce clause as a source of national power I (9/22)

**Reading:** O'Brien, pp. 568-596

Cases for discussion:

- **United States v E.C. Knight**
- **Hammer v Dagenhart**
- **Schechter Poultry Corporation v United States**
- **NLRB v Jones & Laughlin**

C. The commerce clause as a source of national power II (9/24)

**Reading:** O'Brien, pp. 597-613

Cases for discussion:

- **United States v Darby**
- **Wickard v Filburn**
- **Heart of Atlanta Motel v United States**
- **Katzenbach v McClung**

D. Refining and curbing congressional power (9/26-10/1)

**Reading:** O'Brien, pp. 613-660, 672-688

Cases for discussion:

- **United States v Lopez**
- **Reno v Condon**
- **City of Boerne v Flores**

- **United States v Morrison**
- **Gonzales v Raich**
- **National Federation of Independent Business v Sebelius**

## 10/6 Hypothetical: The Structure of the electrical industry

### Recommended reading:

Advanced Energy Economy, **U.S. Electric Power Industry - Context and Structure**, November 2011 at [http://info.aee.net/hs-fs/hub/211732/file-359505558-pdf/white\\_papers/U.S. Electric Power Industry - Context and Structure.pdf](http://info.aee.net/hs-fs/hub/211732/file-359505558-pdf/white_papers/U.S. Electric Power Industry - Context and Structure.pdf)

U.S. Department of Energy, “Electric Power Industry Overview 2007,” Energy Information Administration, at <http://www.eia.doe.gov/cneaf/electricity/page/prim2/toc2.html>

Read: Jennifer Weeks, **Modernizing the Grid**, *CQ Researcher*, February 19, 2010, Volume 20, Issue 7 at <http://0-library.cqpress.com.webpac.lvlspa.org/cqresearcher/document.php?id=cqresrre2010021900>

#### E. Congressional taxing and spending power (10/8)

**Reading:** Obrien, pp. 661-688

Cases for discussion:

- **Steward Machine Company v Davis**
- **South Dakota v Dole**
- **NFIB v Sebelius**

#### V. The Federal system and the Parameters of federal power

##### A. The concept of federalism and the 14<sup>th</sup> Amendment (10/15)

##### B. States and the commerce clause (10/20)

**Reading:** Obrien, pp. 711-723

Cases for discussion:

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

##### C. Substantive due process (10/22)

**Reading:** Obrien, pp. 1045-1078

Cases for discussion:

- **The Slaughterhouse Cases**
- **Munn v Illinois**
- **Lochner v New York**
- **Muller v Oregon**
- **West Coast Hotel v Parrish**

D. The 10<sup>th</sup> and 11<sup>th</sup> Amendments as limits on federal power (10/27-10/29)

**Reading:** O'Brien, pp.743-751, 756-808

Cases for discussion:

- **Garcia v San Antonio MTA**
- **New York v United States**
- **Printz v United States and Mack v United States**
- **Seminole Tribe of Florida v Florida**
- **Alden v Maine**
- **Nevada Dept. of Human Resources v Hibbs**

### 11/3 Hypothetical case preparation

VI. Separation of Powers: Presidential Powers as Chief Executive

A. Presidential prerogatives, discretion and accountability (11/3)

**Reading:** O'Brien, pp. 396-410, 453-475, 483-491, 495-499

Cases for discussion:

- **Myers v United States**
- **Humphrey's Executor v United States**
- **Immigration and Naturalization Service v Chadha**
- **Clinton v City of New York**
- **United States v Nixon**
- **Clinton v Jones**

VII. Presidential Powers and Foreign Affairs

A. Treaties and Executive Agreements (11/5)

**Reading:** O'Brien, pp. 262-283

Cases for discussion:

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

B. Inherent powers (11/10-11/12)

**Reading:** O'Brien, pp. 251-261, 360-390

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 (11/17-11/19)

**Reading:** O'Brien, pp. 301-348

Cases for discussion:

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

**11/24 Hypothetical: In class discussion**

VIII. Voting rights and elections

A. Voting Rights (12/1)

**Reading:** O'Brien, pp. 885-921

Cases for discussion:

- **Wesberry v Sanders**
- **Reynolds v Sims**
- **Vieth v Jubelir**
- **Shaw v Reno**
- **Hunt v Cromartie**
- **Shelby County Alabama v. Holder**
- **Arizona State Legislature v. Arizona Independent Redistricting Commission**

B. Campaigns and Elections (12/3)

**Reading:** O'Brien, pp. 926-956, 973-984

Cases for discussion:

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

12/8 TBD

12/10 Closing

## **Texas Public Policy Foundation (TPPF) v Beiw**

In 2019, the Congress passed and the President signed into law **The Federal Renewable Portfolio Standard Act**. The stated purposes of this legislation was to serve as part of the effort by the United States to address the problems of climate change and global warming, to align its national policies with those practiced in Europe and Japan and to accelerate the development of a renewable energy industry in the face of significant growth of that sector that has transpired in China. The specifics of the legislation were enacted pursuant to the general national goal of requiring every major GHG emitter to reduce emissions by 20 percent from 2005 levels by 2025 and by 80 percent by 2050. Towards that goal, the legislation seeks to have electric utilities and other significant electricity producers in all states increase use of renewable energy that does not produce GHGs for a minimum proportion of their electricity production.

The specific provisions of the legislation include:

- Electricity providers who supplies over 4 million MWh will be required to produce 20 percent of its electricity from renewable sources by 2025. Five percent of this standard can be met through energy efficiency savings, as well as an additional 3% with certification of the Governor of the state in which the provider operates.
- Targets can be met through the use of a cap and trade system in which electricity producers can buy allowances/credits from businesses whose emissions already meet target levels as a result of deployment of renewable energy production technologies.
- In the first five years of the program, the government would distribute 50% of the allowances for free and auction the remaining allowances. After five years all allowances would be distributed by auction.
- The revenues collected by the government would be placed in a trust fund to be administered by the Department of Treasury to provide tax credits to industries (including agriculture) adversely effected by the shift from carbon fuels, to workers preparing/training for jobs in a low-carbon economy (e.g. “green” building construction, water and energy conservation) and consumers potentially facing energy price increases.
- Producers will also be eligible to apply for federal Production Tax Credits to offset some of the investment costs that will be incurred in the installation of renewable production technologies and for modification of the electric grid necessary to accommodate broader use of renewable energy sources.
- State utilities commissions will also be mandated to permit reasonable cost recovery for the additional cost of procuring renewable fuel.
- Electricity producers will be required to provide the Federal Energy Regulatory Commission annual reports documenting compliance with the Portfolio Standards. Failure to meet the standards will result in a payment of \$25/MWh, adjusted for inflation beginning in 2020.



To prevent implementation of the law, suits were filed by the Texas Public Policy Foundation (TPPF) filed suit against Ella Beiwi, Secretary, U.S. Department of Energy, in the U.S. District Court for the Southern District of Texas.

The TPPF charged that the law was an unconstitutional violation of the system of federalism and an unjustifiable federal invasion of the constitutional powers of the states. The plaintiffs argued that the legislation in questions invaded the states traditional police powers as those powers pertained to rate regulation for public utilities chartered by states and the management of the energy portfolios of those utilities operating within individual states. The plaintiffs further argued that federal regulators do not have the authority to order states to adopt particular schemes of regulation under threats of coercive regulatory penalties and that the commerce power does not permit the federal government to specify particular investment decisions through the threat of such penalties in areas governed by state authority. The TTPF also argued that the Congress did not have the authority to mandate that state public utility commissions (PUCs) incorporate into their rate making procedures costs that would be imposed by the federal government as such a mandate also invaded the traditional police powers of the state. Whatever incentives the federal government might seek to offer do not offset the unconstitutional acceptability of the imposing of a coercive scheme of regulation on state authorities.

In responding to the suit, the federal government argued that Congress had the authority to create the regulatory program in question. The authority to do so derived fundamentally from both constitutional provisions that authorized Congress to regulate commerce among the states and well established precedent that the reach of that authority included those matters which affected interstate commerce and involved the instrumentalities, persons or things in interstate commerce. In making these claims, the government pointed out that the evolution of the electrical system in the U.S., the development of regional grids, and the restructuring of the industry led numerous producers to become interstate and international suppliers. This fact inextricably tied the system of electricity production to the system of distribution and made the subject matter part of interstate commerce. As such electricity itself was a clear case of a “thing” in interstate commerce. The government also argued that the policy was prompted in significant part by international and global concerns and as such there needed to be a uniform national response to the problems which the policy was designed to address. Such uniformity could only be achieved by federal action. Finally, the government noted that the policy also rested substantially on the legitimate use of congressional taxing authority to provide financial assistance to a wide range of parties that might be impacted by the changes resulting from the policy and that law included numerous tax relief provisions that would be financed in part by the revenues generated by compliance penalties.

What do you recommend regarding the resolution of the constitutional questions raised here?

