

SUNY, Potsdam College
Department of Politics

Politics 412: Constitutional Law

Spring 2016
MW 2:00-3:40
Flagg Hall 206

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Office Hours: TuTh 12-1:45

Course Description and Objectives. 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 *The New York Times*, cnn.com, 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 address: how has the Court shaped the nature, quality, and scope of governmental action in our society?

This class carries the **AH** and **WI** designators. Specific **AH** objectives follow. 1) Demonstrate knowledge and understanding of at least one significant issue of unity and diversity in American society. 2) Demonstrate knowledge and understanding of common institutions in American society and their effects upon various groups within that society. 3) Demonstrate knowledge and understanding of some aspect of America's evolving relationship with the rest of the world. 4) Demonstrate knowledge and understanding of a sense of history by suggesting continuities and discontinuities in the development of the topic under study. 5) Demonstrate ability in the use of primary sources.

Course Structure. The course will involve both lecture and small-group discussion. Typically, a session will start with lecture and conclude with small-group discussion. Asking questions during the lecture is encouraged. There will be some opportunity for students to participate verbally during the lecture portion of the class as well.

Grading Scale. The grading scale is standard. 92-100=4.0; 90-100=3.7; 88-90=3.3, etc.

Grading. Course grades will be based on the following components:

Attendance, participation, and quizzes, 10% of final grade.

Analytic paper (c. 10 pages), 20%.

Case brief for each class, 30%.

In-class mid-term (15%) and non-cumulative final examination (25%), 40 %.

Extra Credit. There will be opportunity for extra credit, worth 2% of your final grade. I will give details in class, and post information on Moodle.

Attendance, Participation, and Quizzes. Class attendance is required, and is part of the participation grade. Only absences for medical reasons, certified by a doctor, and absences for religious holidays will be considered excused. Coming to class on time and prepared—having read and thought about the readings—is crucial for the ability to understand lecture and contribute intelligently in the class. *Ten percent will be subtracted from the attendance grade for each unexcused absence beyond three.* An absence is defined as not being in class when attendance is taken. At my discretion, I will administer unannounced quizzes covering the readings for a given session and/or information from previous lecture(s), at the beginning of a class. During class discussion, remain respectful of opposing viewpoints, and refrain from personal attacks. Do not browse the internet or use your phone to text in class: Not only does it distract others (and yourself) from learning, it contributes toward making aberrant behavior normative.

Late Paper Policy. Papers are due at the beginning of class. For papers that are late because of reasons not cleared with me in advance, I will subtract 3 % of the total possible points for each *day* (or fraction thereof) it is late. For papers more than 14 days late, no credit will be assigned.

Late Case Brief Policy. Late case briefs will not be graded.

Final Exam and Mid-term Policy. Failure to take the final exam or mid-term at the scheduled time will result in a 30% reduction of the test grade. Students may not leave the classroom during exams.

Assistance. I want to give you any help with the course that you need. My office hours are listed at the beginning of the syllabus; you can always stop by at those times (Very rarely, departmental meetings may overlap with office hours; in that case, I will endeavor to let students know in advance.) Feel free to send me an e-mail when you have a question or concern; my e-mail address is listed also. My office phone number is 267-2716. I will often be in my office, even outside of office hours; you can stop by, although I cannot guarantee that I will be free. If you'd like to meet outside of office hours, it is safest to email, or call, to set up an appointment. If you notice that you are struggling with any aspect of the course, it may be a good idea to meet with me as soon as possible, so that we can discuss ways of overcoming the struggles before there is a serious impact on your grade.

Academic Honesty. Please review the Honor Code:

<http://www.potsdam.edu/studentlife/studentconduct/honorcode/index.cfm>

I expect all of the work you do in this course to be your own. I will tolerate absolutely no cheating or plagiarism (using someone else's words or ideas without proper citation). Any case of cheating, plagiarism, or other academic dishonesty will be reported to the Office of Student Conduct and Community Standards, where it will be handled according to college policy. The default penalty for plagiarism is the 0 on the plagiarized assignment or 1.0 grade reduction in the course for a first offense (whichever reduction of is greater), and a 0 in the class for any subsequent offense.

Accommodations/Disability. I rely on Accommodative Services for assistance in verifying the need for accommodations and developing accommodation strategies. If you are a student with a disability who will require accommodations in this course, please meet with Accommodative Services in Sisson Hall Room 111 for assistance in developing a plan for accommodations. If you are already working with Accommodative Services, please set up a time to meet with me, or come by during office hours, to discuss accommodations. For more information, visit the Accommodative Services website at <http://potsdam.edu/support/oas>.

Textbooks.

Required

Epstein and Walker. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 8th ed. Sage/CQ.

Suggested

Chemerinsky. *Constitutional Law: Principles and Policies*, 5th ed (4th acceptable too). Wolters Kluwer.

Schedule of Readings and Topics. Readings are to be read before the session for which they are listed. Roughly, the schedule of topics follows Epstein and Walker. **Note: readings in bold are required**, readings in regular font are suggested, and readings denoted with “****” are strongly recommended (I'd at least skim all of the recommended E & W pages).

Session 1. 1/25. Organizational session.

Session 2. 1/27. Introduction and basic concepts.

Epstein and Walker 3-56.

Chemerinsky, 5th ed. 1-30 [4th ed: 1-30].

Session 3. 2/1. Introduction and basic concepts continued.

No readings.

Session 4. 2/3. The Judiciary I.

E & W 58-74 (including *Marbury v. Madison*); 79-84; 85-89.

E & W 74-79 (*Martin v. Hunters' Lessee*); 84-85 (*Eakin v. Raub*).

C 31-47 [4th ed 31-48].

Session 5. 2/8. The Judiciary II.

E & W 89-104 (including *Ex parte McCardle* and *Baker v. Carr*); 108-111; 114-119.

E & W 104-108 (*Nixon v. U.S.*); 111-114 (*Flast v. Cohen*)

C 48-238 [4th ed 49-235].

Session 6. 2/10. The Legislature I.

E & W 120-132 (including *Powell v. McCormack*); 138-156 (including *Gravel v. United States* and *McCulloch v. Maryland*).

E & W 132-138 (*U.S. Term Limits v. Thornton*).

C 150-152; 240-250 [4th ed 145-146; 237-247].

Session 7. 2/15. The Legislature II.

E & W 156-157; 160-171 (including *Watkins v. United States* and *Barenblatt v. United States*); 174-182 (including *So. Carolina v. Katzenbach*); Handout on *Shelby Co. v. Holder*.

E & W 157-160 (*McGrain v. Daugherty*); 171-174 (*U.S. v. Curtiss-Wright*).

C 310-313; 324-326 [4th ed 306-307; 316-319].

Session 8. 2/17. The Executive I.

E & W 183-186; 193-198; 203-212 (including *Clinton v. City of New York*); 217. Handout on *NLRB v. Noel Canning*.

E & W 186-193; 198-203 (*in re Neagle*); 212-217 (*Morrison v. Olson*).

C 351-365 [4th ed 343-355].

Session 9. 2/22. The Executive II.

E & W 218-219; 224-233 (including *Humphrey's Executor v. United States* and *United States v. Nixon*); 252-256 (including *U.S. v. Curtiss-Wright*).

E & W 219-224 (*Myers v. United States*); 233-252.

C 365-391 [4th ed 356-383].

Session 10. 2/24. Separation of Powers I.

E & W 257-262; 260-269 (including *I.N.S. v. Chada*); 271-273; 276-279; 283; 289.

E & W 262-265 (*Mistretta v. U.S.*); 273-276 (*Bowsher v. Synar*); 279-283 (*The Prize Cases*); 283-289 (*Ex parte Milligan*).

C 341-349; 368-369; 391-394 [4th ed 333-342; 358-359; 381-384].

Session 11. 2/29. Separation of Powers II.

E & W 290-308 (including *Ex parte Quirin*, *Korematsu v. United States*, and *Youngstown Sheet and Steel v. Sawyer*).

E & W 308-310 (*Dames & Moore v. Reagan*).

C 352-357; 386-388; 400-402; 726-728 [4th ed 343-349; 374-380].

Session 12. 3/2. Separation of Powers III.

E & W 310-322 (including *Hamdan v. Rumsfeld*).

C 394-403; [4th ed 384-392].

Session 13. 3/14. Catch-up and Midterm Review.

Session 14. 3/16. In-Class Midterm Examination (bring pencils).

Session 15. 3/21. Federalism

E & W 330-350 (including *McCulloch v. Maryland* and *Scott v. Sanford*); 356-357; 362-363

E & W 350-356 (*New York v. United States*); 357-362 (*Printz v. U.S.*); 363-391.

C 242-248, esp. 247-248; 327-340; 722-723 [4th ed 240-247; 709-710; 307-316; 319-333].

Session 16. 3/23. Commerce Power I.

E & W 392-401 (including *Gibbons v. Ogden*); 404-405; 407-409; 411-425 (including *Hammer v. Dagenhart* and *A.L.A. Schechter Poultry v. U.S.*).

E & W 401-404 (*U.S. v. E.C. Knight*); 405-407 (*Stafford v. Wallace*); 409-411 (*Champion v. Ames*).

C 250-262 [4th ed 247-259].

Session 17. 3/28. Commerce Power II.

E & W 425-436 (including *NLRB v. Jones & Laughlin Steel Corp.*) 439-442 (*Wickard v. Filburn*).

E & W 436-439 (*U.S. v. Darby*).

C 262-268; 270-271 [4th ed 259-265; 267-268].

Session 18. 3/30. Commerce Power III.

E & W 442-461 (including *Heart of Atlanta v. United States*, *Garcia v. SAMTA*, and *United States v. Lopez*).

C 269-270; 272-274; 332-336 [266-267; 268-272].

Session 19. 4/4. Commerce Power IV.

E&W 465-482 (including *Gonzales v. Raich* and *NFIB v. Sebelius*).

E & W 461-465 (*U.S. v. Morrison*); 482-502.

C 275-281 [4th ed 272-278; 430-466].

Session 20. 4/6. Taxing and Spending I.

E & W 503-513 (including *Pollock v. Farmers' Loan and Trust Co.*); 522-523; 526-530 (including *Bailey v. Drexel Furniture Co.*).

E & W 513-515 (*U.S. v. U.S. Shoe Corp*); 515-522; 523-526 (*McCray v. U.S.*)

C 282-287 [279-284].

Session 21. 4/13. Taxing and Spending II.

E & W 530-539 (including *U.S. v. Butler* and *Steward Machine Co. v. Davis*); 541-550 (including *NFIB v. Sebelius*).

E & W 539-541 (*South Dakota v. Dole*); 530-545.

C 286-290 [4th ed 279-280; 284-286; 466-478].

Session 22. 4/18. Economic Substantive Due Process I.

E & W 569-571; 606-614 (including *Slaughterhouse Cases*); 618-620; 623.

E & W 614-618 (*Munn v. Illinois*); 620-623 (*Allgeyer v. Louisiana*).

C 633-642 [4th ed 621-630].

Session 23. 4/20. Economic Substantive Due Process II.

E & W 623-629 (including *Lochner v. New York*); 635-636; 639; 643-644.

E & W 629-635 (*Muller v. Oregon****); 636-639 (*Adkins v. Children's Hospital*); 640-643 (*Nebbia v. New York*).

C 642-651 [4th ed 630-639].

Session 24. 4/25. Economic Substantive Due Process III.

E & W 640-648 (including *West Coast Hotel v. Parrish*); 650; 655-662 (including *Caperton v. A.T. Massey Coal Co.*).

E & W 649-650 (*Williamson v. Lee Optical Co.*); 650-655 (*BMW of North America v. Gore*)

C 652-657 [4th ed 639-645].

Session 25. 4/27. Contracts Clause I.

E & W 572-574; 577-579; 584-590 (including *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*); 592.

E & W 574-577 (*Fletcher v. Peck*); 579-584 (*Trustees v. Woodward*); 590-592 (*Stone v. Mississippi*).

C 657-662 [4th ed 645-650].

Session 26. 5/1. Contracts Clause II.

Paper Due Session 26.

E & W 592-598 (including *Home Building & Loan Association v. Blaisdell*); 601; 604-605.

E & W 598-600 (*United States Trust Co. v. New Jersey*); 601-604 (*Allied Structural Steel Co. v. Spannaus*).

C 662-667 [4th ed 650-655].

Session 27. 5/3. Takings Clause I.

E & W 663-669 (including *U.S. v. Causby*).

E & W 668-684.

C 667-691 [4th ed 656-678].

Session 28. 5/8. Takings Clause II.

E & W 687-695 (including *Kelo v. New London*).

E & W 684-687 (*Hawaii Housing Authority v. Midkiff*).

C 691-694 [4th ed 678-682].

Sessions 29. 5/10. Catch-up and Review.

In-class final examination (bring pencils):

Thursday, May 19, 12:30 - 2:30 pm

Good luck on final exam!