

POLSCI 271: AMERICAN CONSTITUTIONAL LAW I

INFO

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Dates: Winter Term 2008
Times: M and W 1:50 – 3 PM, F 2:20 – 3:20 PM
Place: Willis 211
Office hours: M and W 3:30 – 5 PM and by appointment

COURSE DESCRIPTION

What constitutes the constitutional tradition in the United States? What can the study of law tell us about the development of political institutions? How can we witness the interplay between civil society and political structure through the lens of constitutional law? Why should we study law at all?

In beginning to answer these questions, this course travels back to the origins of the United States, tracing American constitutional law's development from the era of the Founding to the beginning of the Civil War. Not only will we study constitutional doctrine as it has developed through case law, but we will also study the broader intellectual and political context from which it emerged. This will include treating the following topics: the intellectual origins of the Constitution; the Constitutional Convention and ratification; the development of the judiciary and the centralization of federal power; the role of natural law in constitutional adjudication; the constitutional issues revolving around slavery; and the constitutional conflict that led to the nullification and secession crises.¹

OBJECTIVES

The primary objective of this course is for you to learn **how to think like a constitutional scholar**. This includes the ability to do the following things and do them well:

- Understand the basic arguments within constitutional law doctrine as it evolved from the Founding to the Civil War.
- Compare and contrast the differences within particular periods of the law's development as well as between periods.
- Analyze strengths and weaknesses of legal arguments especially modes of constitutional interpretation (i.e. textualist, originalist, constructivist, et cetera).

¹ This course closely follows Professor Kimberly K. Smith's course taught at Carleton College during 2005-2006. I acknowledge her influence and assistance.

ACTIVITIES AND ASSIGNMENTS

This is an intensive course. You will need approximately **six to eight hours per week** outside of class in order to fully prepare for class meetings. (Assignments such as the case note will take additional time so plan accordingly.) Depending on your own speed and preferences, you may allot your preparation time to reading, taking notes on the readings, meeting with other students, or preparing for presentations. I strongly encourage you to meet regularly with your team (see below) outside of class. Not only will these study groups significantly help your success in the course, but they also will give you a taste of a real law school curriculum.

Specific activities and assignments are as follows:

1. **Class discussion.** Our discussions in class will form a critical part of your learning. When teams are not leading discussion, I will use the Socratic method of interrogation in this class. Each of you should prepare for every class accordingly. At a minimum you should be able to do the following: summarize the facts of the assigned case(s); explain the Court's reasoning and the holding; explain the reasoning of the dissenting opinions, if any; and critique the Court's decision based both on its internal logic and the historical context.
2. **Team assignments.** At the beginning of the term, I will put you into teams of four that will remain for the rest of the term. The purpose of this is to give you practice for an essential part of law school and legal practice – working together to interpret, synthesize, and present legal materials. As a team you will be responsible for leading three class meetings. (Because of scheduling, it may happen that two teams lead for one class.) Before the first round of leading class discussion, I will require that your team meet with me before the day you are scheduled to lead class. After that, you may meet with me if you so desire.

In coming up with ways to lead the class, I encourage you think creatively. This is a chance for you to take responsibility for your own learning and figure out more effective ways to learn to think like constitutional law scholars. Remember to put yourselves in your peers' position. Ask yourselves what would help you learn best while also keeping in mind that different people learn in different ways.

3. **Case note.** See the attached document detailing this assignment.
4. **Two examinations (midterm and final).** Each examination will be cumulative, including all of the material up until that point in the semester. I will give you study and review questions one week prior to each examination.

REQUIRED TEXTS

The following texts and the coursepack may be purchased at the Carleton Bookstore, or elsewhere as may be your preference. I will post additional readings on Moodle [M].

- Kelly, Harbison, and Belz, *The American Constitution*, Vol. 1 (7th edition; Norton, 1978) [KHB].
- Amar, *The Bill of Rights* (Yale, 2000).
- Coursepack for POSC 271 [CP].

EVALUATION

The following is a list of requirements and means of evaluation:

<i>Task</i>	<i>Due Date</i>	<i>Percentage of grade</i>
1. Participation (class discussion, other kinds of participation, and attendance)	Ongoing	15%
2. Midterm	February 13, 2008 (in class)	20%
3. Team assignments	Ongoing	15%
4. Case note	Final due date: March 3, 2008 (in my office by 5 PM) NOTE: Components of this assignment are due during the course of the semester. You must submit all of these parts in order before earning credit for the final draft	25%
5. Final Examination	Scheduled exam time or self-scheduled	25%

COURSE POLICIES

ATTENDANCE: As said above, our class activities form a vital part of this course. I strongly recommend that you avoid missing class unnecessarily. Each unexcused absence will lower your participation grade by a grade (i.e. from A to A-). Excused absences must be cleared with me in advance of the class you will miss. Unexcused tardiness will count as half an absence.

MISSING AND LATE ASSIGNMENTS: Assignments are due at the specified times. Each day an assignment is late I will deduct one letter grade. Missing assignments will receive no credit.

INTEGRITY: I will report all cheating, plagiarism, and academic misconduct immediately to the College. Please also note Carleton College's policy on Academic Integrity and its Community Standards as detailed at http://apps.carleton.edu/campus/dos/handbook/policies/?policy_id=6131.

SUPPORT: Please make use of the Write Place as well as other Academic Services the College has to offer. See the list of support services at <http://www.carleton.edu/student/support/index.html>.

LAPTOPS: Because of extreme potential for distraction, **no laptops are allowed in class**. If you have medical reasons for needing a laptop, please discuss this with me outside of class.

ASSIGNMENT: CASE NOTE

Your assignment is to research a significant constitutional case and explain its importance to the development of constitutional law, to constitutional politics, and to the development of the Court as a political institution. Your paper should be **no more than 15 pages** (12-pt font, 1 inch margins). Case notes are designed to explain the facts, reasoning, and holding in a case in a concise and simple fashion. They are usually read by legal professionals, but they should be easily understood by an intelligent layperson. They follow a standard format:

I. Introduction: This should be brief and to the point. It should state your thesis.

II. Background: This section will discuss the specific facts of the case as well as any political, social, legal, or cultural contextual factors that you think will help to illuminate the case. It should conclude by telling us how the case got to the Supreme Court and what the major legal issues were.

III. Analysis of the Decision: This section will take us carefully, in a step-by-step analysis, through the reasoning in the Court's opinion and the concurring and dissenting opinions. You may ignore or only touch on the minor or technical issues; focus on the important ones.

IV. Significance: This section should discuss the important impacts of the decision, which may be social, economic, political or legal. Your research should alert you to a range of important consequences; this section should demonstrate your deep engagement with the scholarly literature.

V. Conclusion: A separate conclusion is optional.

You will turn in sections of the case note for me to comment on as indicated on the syllabus. I also strongly recommend that you meet with other students to discuss your research or read drafts. You will then revise these sections and turn in a complete, polished case note on March 3, 2008.

Documenting sources: I expect you to do a **significant** amount of research on your case. A thoroughly researched paper will rely on many sources, drawing on both books and periodicals. Your bibliography should demonstrate that you have explored the **best** scholarship on the subject (which will typically mean that you should not rely on Internet sources, unless you can make the case that they are reliable and respected). You should cite your sources; the conventions of legal scholarship demand that you carefully document your factual assertions. *PLEASE NOTE:* You should carefully document your sources on **all** drafts that you turn in.

Suggested cases: (You may choose a case not on this list; just clear it with me first.)

Chisholm v Georgia, 2 Dallas 419 (1793)

United States v Peters, 5 U.S. 115 (1809)

Marbury v. Madison, 5 US 137 (1803)

Martin v Hunter's Lessee, 14 US 304 (1816)

Cohens v Virginia, 19 US 264 (1821)

McCulloch v Maryland, 17 US 316 (1819)

Fletcher v Peck, 10 US 87 (1810)

U.S. v Hudson and Goodwin, 11 U.S. 32 (1812)

Dartmouth College v Woodward, 4 Wheaton 518 (1819)

Gibbons v Ogden, 22 US 1 (1824)

Barron v Baltimore, 5 U.S. 243 (1833)

Charles River Bridge v Warren Bridge, 36 US 420 (1837)

Worcester v Georgia, 6 Peters 515 (1832) & Cherokee Nation v Georgia, 5 Peters 1 (1831)

Prigg v Pennsylvania, 41 US 539 (1842)

Luther v Borden, 7 U.S. 1 (1849)

Ableman v Booth, 21 Howard 506 (1856)

Dred Scott v Sanford, 60 US 393 (1857)

COURSE SCHEDULE

Date	Topic	To be completed before class:
1/4	Introductions, objective for the course, discussion of team assignments	Read syllabus thoroughly; bring list of your learning objectives for the course
1/7	Intellectual origins of the American Constitution	KHB Ch. 3 Locke, <i>Second Treatise</i> [CP] Blackstone, <i>Commentaries</i> [CP] *Submit any preferences about teams by 1/7/08 at 5 PM*
1/9	What is a “constitution”?	KHB Ch. 4 Waldron, “Precommitment and Disagreement” [M]
1/11	Interpretations of the Founding	KHB Ch. 5 Roche, “The Founding Fathers” [M] Beard, “Framing the Constitution” [M]
1/14	Structure and Controversies of the Founding	KHB Ch. 6 <i>Articles of Confederation</i> [KHB] <i>Constitution</i> [KHB]
1/16	Political Theory of the Constitution I	KHB Ch. 7 Federalist Papers nos. 10, 39, 51, 78, 80, 81 [CP] Antifederalist, <i>Centinel I</i> and <i>Federal Farmer I</i> [CP]
1/18	Political Theory of the Constitution II	Federalist Papers nos. 78, 80, 81
1/21	Does the Founding matter?	Brest, “The Misconceived Quest for Original Understanding” [M] *PAPER TOPICS DUE IN CLASS*
1/23	The Bill of Rights I	Federalist #84 [CP] Madison’s Remarks on the Bill of Rights (Congressional Debates) [CP] <i>Barron v Baltimore</i> , 5 U.S. 243 (1833) [CP]
1/25	The Bill of Rights II	Amar, ch. 1 *BEGIN TEAM ASSIGNMENTS*
1/28	The Bill of Rights III	Amar, chs. 2-6 (by 1/30)
1/30	The Bill of Rights IV	Amar, chs. 2-6 (by 1/30)
2/1	Seditious libel and freedom of speech	KHB Ch. 8 Zenger’s Case (Hamilton’s summation) [CP]
2/4	MIDTERM BREAK	

2/6	Federalism, Parties, and the Constitution	Sedition Act & Congressional debate on repeal [CP] Virginia and Kentucky Resolutions [CP] *RESEARCH PAPER BACKGROUND SECTION DUE* (<i>properly documented</i> and with preliminary bibliography, on 2/7, at noon in my office)
2/8	Building the Federal Judiciary	KHB Ch. 9, 10 Judiciary Act of 1789 [CP] Antifederalist essay (Brutus 11) [CP]
2/11	The Eleventh Amendment	<i>Chisolm v. Georgia</i> [CP]
2/13	MIDTERM EXAM (in class)	Study hard!
2/15	Establishing Judicial Review	Calder v Bull [CP] Marbury v Madison [CP] Eakin v Raub [CP]
2/18	Establishing Federal Judicial Supremacy	KHB Ch. 11 Cohens v Virginia, Martin v Hunter's Lessee [CP] Fletcher v Peck [CP]
2/20	The Extent of Federal Power	KHB Ch. 12 McCulloch v Maryland [CP] Jackson's Veto Message [CP]
2/22	Indian Removal	Cherokee Nation v Georgia [CP] Worcester v Georgia [CP]
2/25	Nullification	Nullification Proclamation Jackson's Response Calhoun, Disquisition on Government [CP] *ANALYSIS SECTION AND REVISED BACKGROUND SECTION DUE* (<i>both sections properly documented</i> , due in class)
2/27	Commerce Power	Gibbons v Ogden [CP] Cooley v Bd. Of Wardens
2/29	The Taney Court: Commerce Power and Police Power	KHB Ch. 13 Charles River Bridge v Warren Bridge [CP]
3/3	The Law of Slavery I	KHB, Ch. 14 Prigg v Pennsylvania [CP] *FINAL DRAFT OF CASE NOTE DUE MARCH 3* (in my office by 5 PM)
3/5	The Law of Slavery II	Ableman v Booth [CP]

Dred Scott v Sanford [CP]

3/7	Secession	Lincoln's First Inaugural Address
3/10	Review for exam	Bring questions to class