Constitutional Law
Government 311
Skidmore College

Instructor: Beau Breslin
Time: MW, 4:00 P.M. – 5:20 P.M.
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Introduction

The United States Constitution animates the entire American political experiment. Indeed, it regulates the behavior of America’s political branches, while simultaneously entrusting those same institutions with the authority to make decisions on behalf of the people. In that respect, the Constitution is a paradox: it is charged with the responsibility not only to limit government, but also to empower it.

Interpreting the Constitution is thus complex. The primary objective of this course is to appreciate that complexity and yet still find ways to breathe life into a document written more than two centuries ago. Thankfully, we have some help. The formal task of interpreting the Constitution falls primarily (though not exclusively) to the federal judiciary. Because Supreme Court Justices are the political philosophers of our time, the opinions they write should be seen as examples of first-rate political theory. They are commentaries on us as Americans and as political beings. In any given term the Court will consider critical questions regarding the scope of political power, the legitimacy of governmental regulation, and the extent of personal or individual freedom.

With that in mind, another important aim of this course is to become intimately familiar with the practice and importance of the Supreme Court as the “ultimate” interpreter of the U.S. Constitution. Beginning with an examination of the principles of judicial review and appellate jurisdiction, we will then turn to those technical issues—standing, mootness, ripeness, etc.—that help determine the justiciability of any given case. After that, we will explore the Court’s ongoing role as arbiter of political disputes between the federal government and the various states, as well as those between differing institutions within the same governmental level. In the end, the goal of this course is to develop a broad understanding of the Constitution and the role of the Supreme Court in American politics.

In order to fully succeed, this class cannot lose sight of historical context. Too often a course on American constitutional law will focus primarily on the cases and principles without also paying sufficient attention to the historical
circumstances surrounding the development of the law. Accordingly, we will make every effort to connect the work of the Court with the progress of our country’s political history. (Robert McCloskey’s book entitled *The American Supreme Court* is the single most important work considering the historical aspect of American Constitutional Law and thus it should be read with as much care as the main text). It is safe to say that without an acute awareness of the times and circumstances in which the Court operated, we cannot hope to achieve our main goal of becoming educated and knowledgeable citizens of the American constitutional experiment.

**Style**

The investigation of American constitutional law requires a deep and full commitment by all. Students must be prepared to read and digest the material as they will be responsible for sharing their thoughts, ideas and questions with the class. It seems appropriate then to conduct the class by utilizing a variety of techniques including general discussions, presentations and simulations. Because this class will be treated more like a seminar, lectures will be kept to a minimum and student participation will be required.

**Requirements**

1) The study of constitutional law is an ongoing, deliberative exercise. Accordingly, involvement by all students in the class is essential. Each student will thus be required to do all the reading prior to the scheduled class as well as actively participate in all class discussions.

2) Students will be required to participate in a moot court session scheduled at the end of the semester. Details, including the controversy, will be distributed within the first few weeks of class.

3) Students will be required to complete a five page paper in which they interpret a single work of art in the upcoming Tang exhibition, “America Starts Here: Kate Ericson and Mel Ziegler.” The due date for this paper is October 12.

4) In addition, a mid-term exam will be administered on November 2. *This is the only date on which the mid-term will be given, i.e., there will be no Make Up Exam.* Students missing the mid-term without a valid excuse will receive a “0” for that part of the grade.

5) A cumulative final exam will be taken at the scheduled time (December 22).

**Note:** All assignments (attendance and participation, 5 page paper, moot court, midterm, and the final) are important and will be weighed equally in the determination of the final grade.
Course Materials

(1) Required books available for purchase at the Skidmore Shop:


A note about the reading: The cases mentioned on the syllabus are the major ones explored in the Sullivan and Gunther text. That, however, is not to say they are the only ones. Often times we will discuss some of the secondary cases, and, as such, they demand equal attention. I can assure you the exams will test your knowledge of both the highlighted cases as well as some of the more obscure ones. As a result, I implore you to take them all seriously.

Introduction to the Court and the Constitution

**September 7**: Introduction

**September 12**: Robert McCloskey. *The American Supreme Court* (chpt. 1-2)

The Power of the Court

**September 14**: Sullivan and Gunther. *Constitutional Law* (pp. 1-31)
  - Marbury v. Madison (1803)

**September 19**: Sullivan and Gunther. *Constitutional Law* (pp. 1-31)
  - Marbury v. Madison (1803) (continued)
  - Cooper v. Aaron (1958)

**September 21**: Sullivan and Gunther. *Constitutional Law* (pp. 71-85)
  - Martin v. Hunter’s Lessee (1816)
  - Cohens v. Virginia (1821)
  - Ex Parte McCardle (1869)
  - Michigan v. Long (1983) (to be distributed)
Prerequisites for Constitutional Adjudication

September 26: Sullivan and Gunther. Constitutional Law (pp. 51-71)
• Warth v. Seldin (1975)
• Lujan v. Defenders of Wildlife (1992)
• Raines v. Byrd (1997)

September 28: Sullivan and Gunther. Constitutional Law (pp. 31-50)
• Baker v. Carr (1962)
• Reynolds v. Sims (1964)
• Nixon v. United States (1993)

National vs. State Authority
Part I: Introduction

October 3: Sullivan and Gunther. Constitutional Law (pp. 87-110)
• McCulloch v. Maryland (1819)
Robert McCloskey. The American Supreme Court (chapter 3)

October 5: Sullivan and Gunther. Constitutional Law (pp. 87-110)
• McCulloch v. Maryland (1819) (continued)
Robert McCloskey. The American Supreme Court (chapter 4)

October 10: Sullivan and Gunther. Constitutional Law (pp. 110-122)

Part II: The Commerce Power

October 12: Robert McCloskey. The American Supreme Court (chpt. 5-6)
Sullivan and Gunther. Constitutional Law (pp. 123-130)
• Gibbons v. Ogden (1824)
• United States v. E.C. Knight Co. (1895)
• The Shreveport Rate Case (1914)

Paper Due

October 17: Sullivan and Gunther. Constitutional Law (pp. 130-141)
- Champion v. Ames (1903)
- Hammer v. Dagenhart (1918)
- Schechter Poultry Corp v. United States (1935)
- Carter v. Carter Coal Co. (1936)

**October 19:** Sullivan and Gunther. Constitutional Law (pp. 142-153)
- NLRB v. Jones and Laughlin Steel Corp. (1937)
- United States v. Darby (1941)
- Wickard v. Filburn (1942)
- Heart of Atlanta Motel v. United States (1964)
- Katzenbach v. McClung (1964)

**October 24:** Sullivan and Gunther. Constitutional Law (pp. 178-193)
- National League of Cities v. Usery (1976)
- Garcia v. San Antonio Metropolitan Transit Authority (1985)
- New York v. United States (1992)

**October 26:** Sullivan and Gunther. Constitutional Law (pp. 153-178)

**October 31:** Sullivan and Gunther. Constitutional Law (pp. 193-215)
- Printz v. United States (1997)

**November 2:** Mid-term Exam

**Institutional Structure of American Government**

**Part I: Federalism**

**November 7:** Sullivan and Gunther. Constitutional Law (pp. 244-255)
- Gibbons v. Ogden (1824)
- Willson v. Black Bird Creek Marsh Co. (1829)
- Cooley v. Board of Wardens of the Port of Philadelphia (1851)

**November 9:** Sullivan and Gunther. Constitutional Law (pp. 286-303)
- South Carolina Highway Dept. v. Barnwell Bros. (1938)
- Southern Pacific Co. v. Arizona (1945)
• Bibb v. Navajo Freight Lines, Inc. (1959)
• Kassel v. Consolidated Freightways Corp (1981)
• Pike v. Bruce Church, Inc. (1970)

**November 14:**  Sullivan and Gunther. Constitutional Law (pp. 256-269)
  • Philadelphia v. New Jersey (1978)
  • Maine v. Taylor (1986)
  • West Lynn Creamery v. Healy (1994)
  • Camps Newfound/Owatonna, Inc. v. Town of Harrison (1997)

**November 16:**  Sullivan and Gunther. Constitutional Law (pp. 269-286)
  • Dean Milk Co. v. Madison (1951)
  • H.P. Hood and Sons v. DuMond (1949)
  • Hunt v. Washington State Apple Advertising Comm (1977)

**November 21:**  Sullivan and Gunther. Constitutional Law (pp. 303-316)
  • Exxon Corp v. Governor of Maryland (1978)
  • Minnesota v. Clover Leaf Creamery Co. (1981)
  • South-Central Timber Dev. v. Wunnicke (1984)

**November 28:**  Sullivan and Gunther. Constitutional Law (pp. 216-243)
  • Bailey v. Drexel Furniture Co. (1922)
  • United States v. Kahriger (1953)
  • United States v. Butler (1936)
  • South Dakota v. Dole (1987)
  • Woods v. Cloyd W. Miller Co. (1948)
  • Missouri v. Holland (1920)

**Part II: Separation of Powers**

**November 30:**  Sullivan and Gunther. Constitutional Law (pp. 343-385)
  • Steel Seizure Case (1952)
  • Dames & Moore v. Regan (1981)
  • United States v. Curtiss-Wright Export Corp. (1936)

**December 5:** Sullivan and Gunther. Constitutional Law (pp. 385-402)
  • INS v. Chadha (1983)

**December 7:** Sullivan and Gunther. Constitutional Law (pp. 402-419)
  • Bowsher v. Synar (1986)
  • Morrison v. Olson (1988)
  • Mistretta v. United States (1989)

**December 12:** Sullivan and Gunther. Constitutional Law (pp. 420-441)
  • Nixon v. Fitzgerald (1982)
  • Clinton v. Jones (1997)

**December 13-18:** Review Session (time to be scheduled)

**December 22:** Final Exam (1:30 P.M. — 4:30 P.M.)

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**Some Useful Secondary Sources**
(For additional or supplemental reading)

**The Constitution: The Founding Period**
• Gordon S. Wood. *The Creation of the American Republic*
• Herbert Storing. *The Complete Anti-Federalist*
• Bernard Bailyn. *The Ideological Origins of the American Revolution*
• Alexis de Tocqueville. *Democracy in America*
• James Madison. *Notes of Debates in the Federal Convention of 1787*
• Clinton Rossiter. *1787: Grand Convention*
• Max Farrand. *The Records of the Federal Convention of 1787*
• Forrest McDonald. *The Foundation of the American Republic*
• Merrill Jensen. *The Articles of Confederation*
• Joseph Story. *A Familiar Exposition of the Constitution of the United States*

**American Constitutional Law**
• Laurence Tribe. *Constitutional Choices*
• Alexander Bickel. *The Least Dangerous Branch*
• Christopher Wolfe. *The Rise of Modern Judicial Review*
• David M. O’Brien. *Storm Center: The Supreme Court in American Politics*
• John Agresto. *The Supreme Court and Constitutional Democracy*
• Robert H. Bork. *The Tempting of America: The Political Seduction of the Law*
• The Federalist Society. *The Great Debate: Interpreting Our Written Constitution*
• Donald L. Horowitz. *The Courts and Social Policy*
• John Hart Ely. *Democracy and Distrust*
• Rogers Smith. *Liberalism and American Constitutional Law*
• Ronald Dworkin. *Taking Rights Seriously*
• Laurence Tribe and Michael Dorf. *On Reading the Constitution*
• Sanford Levinson. *Constitutional Faith*
• William Rehnquist. *The Supreme Court*
• Archibald Cox. *The Court and the Constitution*
• David A.J. Richards. *Toleration and the Constitution*
• Raoul Berger. *Government by Judiciary: The Transformation of the Fourteenth Amendment*
• Henry Abraham. *The Judiciary*
• Felix Frankfurter. *The Commerce Clause under Marshall, Taney and Waite*
• Gerald Gunther (ed.). *John Marshall’s Defense of McCulloch v. Maryland*

**Note:** If you need additional, more specific, references, come see me and I will direct you further.