

PSC 330
Constitutional Law I
UWSP
Fall 2018
T/Th 9:30-10:45
CCC 234

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CCC 482

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Office hours: Monday, Tuesday, Thursday 11-12pm, and by appointment.

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“The purpose of the Constitution was not only to grant power, but to keep it from getting out of hand.” Justice Robert H. Jackson, concurring, Youngstown Sheet & Tubing Co. v. Sawyer 343 U S 579 (1952).

“The Court's authority-possessed of neither the purse nor the sword-ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.”
Justice Felix Frankfurter, dissenting. Baker v. Carr. 369 U.S. 186 (1962).

“Constitutional interpretation is not at all a science, but applied politics.” Justice Felix Frankfurter

Course Outline and Objectives

This course examines how the United States Supreme Court interprets the Constitution, and how its constitutional decisions affect the powers of other federal and state political institutions. We are particularly in learning how the Court's interpretation of the Constitution can empower, and constrain, policymaking by Congress, the Executive, and the states. We categorize cases this semester according to four broad policy areas: the Constitution and National Security; the Constitution and Presidential Power; the Constitution and Economic Policy; and the Constitution and Criminal Justice.

Learning Outcomes

Some of the learning outcomes for this course are:

- students will learn to read and analyze closely and critically constitutional cases decided by the Supreme Court and other courts;
- students will study the Court's decisions to learn, understand, and explain doctrinal developments in American Constitutional Law;
- students will learn about the Court's role in interpreting the Constitution;
- students will gain an understanding of the basic constitutional disputes and Supreme Court cases;
- and
- students will learn how constitutional law affects specific policy areas in American politics.

Participation: 25% your semester grade is based on participation in class. This semester I do not have a required attendance policy. However, your participation grade is heavily dependent on class attendance AND participation in discussions. Please see the participation grade rubric for more information. I will post your participation grade and attendance in D2L on a regular basis.

This course often requires *active* participation from students, which means much of our time centers on classroom discussion. To facilitate discussion, I will, from time to time, call on people to participate. If this kind of classroom interaction isn't for you, then I suggest you drop the class.

Reading: *the readings for this course are extensive and consist mainly of Supreme Court cases organized topically around each the policy areas studied this semester. You must be prepared to work in this class, and you must come to class prepared to discuss the assigned reading. Therefore, you must keep up with the reading assignments. If you cannot do the reading for each seminar, then do not take this class.*



Bring your casebook with you to class!!!

Grading

Class participation	25%	
Online Midterm	25%	In D2L. Dates: Opens on October 11 at 12 noon. Closes on October 16 at 8am.
Final Paper	25%	Due date to be determined.
Online Final Exam	25%	In D2L. Dates: Opens on December 17 at 12 noon. Closes on December 22 at 12 noon.

Online Midterm: The online midterm exam listed above will consist of two essay questions answered in D2L. It is an open-book exam. You will have 3 hours to answer the question prompts once you open the exam. See the dates listed above for availability.

Online Final Exam: There will be an online final exam consisting of two essay exams and some short answer questions. The exam will be an open book exam. You will have 4 hours to complete the exam. See the dates listed above for availability.

D2L: some cases and other course materials will be placed in D2L.

Grade distribution:

A	94-100%	A-	90-93%	B-	80-83%
B+	87-89%	B	84-86%	C-	70-73%
C+	77-79%	C	74-76%	F	<60%
D+	66-69%	D	60-65%		

Make-up exams: Since there are only two exams in this course, and both are online in D2L, you most likely will NOT miss one. However, if you do miss the mid-term or final due to illness, family emergency, or university-related event, you may take a make-up exam scheduled by me. Please be ready to provide *documentation* of your excuse in the form of a university letter, doctor's excuse, etc.

Writing assignment:

The writing assignment is due in D2L, with the due date to be determined. NOTE: no extensions for the paper will be granted. You must upload your paper to the D2L website for the course. I will only accept papers through D2L, NOT through e-mail or other electronic means. You do NOT need to hand in a hard copy of the paper to me. The writing assignment will be available in D2L later in the semester and specific instructions for the assignment will be available in D2L at a later date too. It will have a minimum word count of 2500 words.

Class Decorum: academic success hinges upon a classroom environment that supports learning. To that end, I ask that all classroom disruptions be kept to a minimum.

No Screens: You may NOT use any device with a screen during class, unless you have my explicit permission to do so.

Statement on Academic Integrity: I take very seriously the issue of academic integrity—the idea that academic honesty is a vital part of higher education. For the UWSP policy on academic integrity—what it is, and violations of it—I refer you to pages 5 and 6 of the Community Rights and Responsibilities Document given to all UWSP students. Academic misconduct in this course may result in sanctions, which may include (but are not limited to): a 0 on a specific assignment; a failing grade in the course; removal from the course.

Student Privacy: Federal law protects your privacy as a college student, which means your academic records generally cannot be released without your permission. Therefore, I cannot discuss your grades and classroom performance with your roommate, friends, and even parents.

Communication: I will use UWSP e-mail as the main means of communicating with the class. I expect you to monitor your university e-mail account frequently.

Reading:

Most readings are from the casebook listed below. Some cases and other documents are in D2L, as listed in the syllabus.

TEXTRENTAL: Casebook: Louis Fisher and Katy Harriger, American Constitutional Law (Carolina Academic Press, 2016).

PURCHASE: David J. Bodenhamer, The U.S. Constitution: A Very Short Introduction, (Oxford University Press, 2018).

All readings and cases are required. The page numbers listed in the syllabus cover the introductory commentary for each section and the start of each case.

NOTE that the course is organized differently than other courses you've taken. Each date or set of dates will focus on constitutional disputes and law affecting broad policy areas. The cases listed under each section are the cases you are responsible for reading. Not all cases will be covered in class, but you are expected to know each case listed. You will have the opportunity to demonstrate your knowledge of the cases in class discussions, exams, and the written paper.

September 4 Introduction

Topic 1: The Constitution

Course days: September 6, 11, 13

David Bodenhamer, The U.S. Constitution: A Very Short Introduction, (Oxford University Press, 2018)

Casebook:

Alexander Hamilton, *Federalist No. 78*, 36

The Road to Marbury, 37-42

Case: Marbury v. Madison, 42

Topic 2: The Constitution, National Security, and Foreign Affairs

Course days: September 18, 20, 25, 27, October 2, 4

Skim the following sections:

Hamilton on Executive Power 169

External and Internal Affairs 249

An Executive Prerogative? 261

Treaties and Executive Agreements 276

Cases:

The Prize Cases (1863) 265

Ex parte Milligan (1866) 267

Ex Parte Merryman, in D2L

Ex Parte Quirin, in D2L

United States v. Curtiss-Wright Corp. (1936) 253

Korematsu v. United States (1944) 268

Youngstown Co. v. Sawyer (1952) 271

New York Times Co. v. United States (1971) 273

Goldwater v. Carter (1979) 280

Haig v. Agee (1981) 259

Dames & Moore v. Regan (1981) 282

Dellums v. Bush (D.D.C. 1990) 304

The War Power 285

Campbell v. Clinton (D.C. Cir. 2000) 306

Hamdi v. Rumsfeld (2004) 296

Hamdan v. Rumsfeld(2006) 298

Boumediene v. Bush (2008) 300

Zivotofsky v. Kerry (2015) 256

Holder v. Humanitarian Law Project (2010) 460

Trump v. Hawaii (2018) in D2L

Topic 3: Investigating the Presidency

Course days: October 9,11, 16

Investigations and Executive Privilege, 219

Cases:

Watkins v US. (1957), 225

Barenblatt v. U.S. (1959), 228

Morrison v. Olson (1988), 179

U.S. v. Nixon (1974), 230

The AT&T Cases, 233

Clinton v. Jones (1997), 235

Can a sitting President be indicted?

D2L: 1973 Justice Department Memo; 1998 Kenneth Starr Memo; 2000 Justice Department Memo

Topic 4: The Constitution and Economic Policy

Course days: October 18,23,25, 30, November 1, 6, 8

Reread the chapter on Property in Bodenhamer

Skim the following sections:

The Meaning of Property 399

Madison's Essay on Property 400

The Commerce Clause 325

The Contract Clause 401

The Takings Clause 413

The Police Power 425

Substantive Due Process 431

Nationalization of the Economy 331

The New Deal Watershed 337

From National League to Garcia 349

The Spending and Taxing Powers 366

State Powers Revived 354

Cases:

The Debate over the National Bank (in D2L)

Calder v. Bull (1798) 404

Fletcher v. Peck (1810) 406

McCulloch v. Maryland (1819) 320

Dartmouth College v. Woodward (1819) 407

Gibbons v. Ogden (1824) 327

Charles River Bridge v. Warren Bridge (1837) 409

Cooley v. Board of Wardens (1852) 330

The Legal Tender Cases (in D2L)

Slaughter-House Cases (1873) 426

Munn v. Illinois (1877) 429
Champion v. Ames (Lottery Case) (1903) 333
Lochner v. New York (1905) 435
Hammer v. Dagenhart (1918) 335
Bailey v. Drexel Furniture Co. (Child Labor Tax Case) (1922) 370
Adkins v. Children's Hospital (1923) 437
Home Bldg. & Loan Assn. v. Blaisdell (1934) 411
Carter v. Carter Coal Co. (1936) 340
Steward Machine Co. v. Davis (1937) 371
West Coast Hotel Co. v. Parrish (1937) 439
NLRB v. Jones & Laughlin (1937) 342
United States v. Darby (1941) 345
Wickard v. Filburn (1942) 346
Shelley v. Kraemer (1948) 830
Ferguson v. Skrupa (1963) 441
Heart of Atlanta Motel v. United States
National League of Cities v. Usery (1976) 350
Hawaii Housing Authority v. Midkiff (1984) 420
Garcia v. San Antonio Metro. Transit Auth. (1985) 352
South Dakota v. Dole (1987) 373
United States v. Lopez (1995) 359
United States v. Morrison (2000) 362
Gonzales v. Raich (2005) 364
Kelo v. City of New London (2005) 422
Congress Responds to Kelo 424
National Federation of Independent Business v. Sebelius (2012) 375
King v. Burwell 378

Topic 5: The Constitution and Criminal Justice

Course days: November 13, 15, 20, 22

Thanksgiving Break: 27, 29: No class

December 4, 6, 11, 13

This section of the course will focus on due process and criminal justice. We'll study cases concerning due process broadly defined, and the 4th, 5th, 6th, and 8th Amendments.

The Concept of Due Process 643
Due Process for Juveniles 647
Grand Juries and Jury Trials 651
Fundamentals of a Fair Trial 663
Self-Incrimination 671
Assistance of Counsel 675
The Eighth Amendment 688
Prisoners' Rights 712
The Right to Bear Arms 716
Expectations of Privacy 725

Arrest and Search Warrants 727
Exceptions to the Warrant Requirement 733
Electronic Eavesdropping 762
The Exclusionary Rule 772

General Criminal Justice/Due Process Cases:

Weeks v. United States (1914) 777
Olmstead v. United States (1928) 767
Powell v. Alabama (1932) 646
Palko v. Connecticut (1937) 669
Mapp v. Ohio (1961) 779
Gideon v. Wainwright (1963) 681
Escobedo v. Illinois (1964) 683
Miranda v. Arizona (1966) 684
In re Gault (1967) 649
Katz v. United States (1967) 770
Terry v. Ohio (1968) 756
Chimel v. California (1969) 758
Duncan v. Louisiana (1968) 657
Coolidge v. New Hampshire (1971) 749
Apodaca v. Oregon (1972) 659
Ballew v. Georgia (1978) 661
United States v. Ross (1982) 754
United States v. Leon (1984) 781
New Jersey v. T.L.O. (1985) 760
California v. Ciraolo (1986) 752
Dickerson v. United States (2000) 686

Death Penalty Cases:

Furman v. Georgia (1972) 700
Gregg v. Georgia (1976) 703
Atkins v. Virginia (2002) 705
Glossip v. Gross (2015) 708
Justice Lewis Powell, Jr., The Death
Penalty and Public Opinion 711

The Right to Bear Arms:

District of Columbia v. Heller (2008) 719

GRADING Rubrics

Participation Rubric

Your participation grade in this class will be based on the following rubric. Students are expected to participate regularly in class discussions. Participation is to be based on *quality and quantity*. If you don't come to class, you obviously cannot participate. Given that you will be graded on your participation in a somewhat spontaneous atmosphere of seminar discussion, the following general rules apply for participation grades.

NOTE: I will frequently refer to the text during class. You are expected to have your textbook with you for reference.

A grade shows that the student:

- frequent participation in class discussions;
- shows a real familiarity with the assigned readings;
- demonstrates a critical and analytical reading of the material;
- shows an ability to go beyond mere description of the readings by, among other things, raising questions about how and why a specific piece was written and the message that it conveys;
- understands the readings well enough to prompts further class discussion;
- is able to make connections between and among assigned readings and to larger political and philosophical issues, and American political constitutional development;

B grade shows that the student:

- usually participates in class discussions;
- shows a basic familiarity with the assigned readings;
- can describe the readings and make connections between reading selections;

C grade shows that the student:

- infrequently participates in class discussions;
- shows minimal familiarity with the assigned readings;
- shows only basic understanding of the readings;
- participation is not well-informed, based on the assigned readings, and tends to describe the readings without providing individual analysis.

D/F shows that the student is deficient for the following reasons:

- participation is infrequent due to student absence;
- student is not prepared and has not done the reading prior to class;
- student cannot engage in discussion of the readings;
- student shows hostility, indifference, or inability to engage with other students in the class.

EXAM Rubric

Mid-Term and Final

Criteria	▽ A Excellent	▽ A-/B+	▽ B	▽ B-/C+	▽ C	▽ C-/D
▼ Demonstrated knowledge of the main principles and arguments of relevant readings and cases	Excellent knowledge of the main principles and arguments of readings cases		Shows good knowledge of the readings or cases		Shows minimal knowledge of the readings or cases	Shows little to no knowledge of the readings or cases
▼ Ability to integrate and use case selections in a coherent argument	Excellent ability to integrate and use cases in a coherent argument		Good ability		Average ability	Poor use of cases; argument is incoherent
▼ Ability to distinguish between the cases	Excellent demonstrated ability		Good demonstrated ability		Average ability	Unable to distinguish between cases
▼ Essay shows that the author has a thorough understanding of the assigned materials	Demonstrates thorough understanding		Demonstrates good understanding		Average understanding	Author does not show an understanding of the cases
▼ Essay shows that the author can write critically and analytically about the materials	Excellent writing abilities		Good writing abilities		Average	Essay does not demonstrate critical and analytical writing
▼ Well organized, coherent essay that addresses the specific question(s).	Excellent essay organization and coherence. Questions are addressed in full.		Good essay organization and coherence. Questions are generally addressed in full.		Average essay organization and coherence. Questions are not addressed in full.	Poor essay organization and coherence. Questions are not addressed in full.

