This course examines the legal politics that constitute governing institutions, citizen rights, and the politics of legal authority under the US Constitution. We study constitutional interpretation, doctrinal theories of State power, and the role of constitutional law in the development of the US political economy. Particular attention is given to: the politics of legal interpretation; the scope and nature of institutional power (legislative, executive, judicial, and administrative); and the effects these powers have on the character of constitutional democracy in the US.

Reading assignments are listed below in topical order and according to the dates they will be discussed in class. You must read the assigned cases and materials before each class so you are able to follow the lecture and participate in the discussion.

Required examinations and optional paper: There are two required examinations: In class Mid-term on October 17th (40% of your final grade); and Final on the date CAS designates (60% of your final grade). The final examination will cover lectures and reading assignments for the entire course. If you want extra credit (10 points) you may write a short paper (7-10 pages, double spaced, plus footnotes and bibliography) focusing on Richard M. Pious approach to The War on Terrorism and the Rule of Law. The paper is due no later than November 30th.

ASSIGNED READINGS


Introduction

September 5: Studying Constitutional Power

I. Interpreting Constitutional Politics (weeks 1 & 2)

September 7: Making and Amending the Constitution

Brigham & Harrington, Chapter 1 (pp. 1-20)

Hannah Arendt, “On Revolution”
*Federalist #78*
*Palko v. Connecticut* (1937)

September 12: The Practices of Judging

Brigham & Harrington, Chapter 1 (pp. 20-34)

*Marbury v. Madison* (1802)
*Eakin v. Raub* (1825)
*Cooper v. Aaron* (1958)
President Abraham Lincoln, *First Inaugural* (1861)
President Franklin Roosevelt, *On Reorganizing the Federal Judiciary* (1937)

September 14: The Culture of the Constitution

Brigham & Harrington, Chapter 1 (pp. 34-57)

Hyde Amendment Debate
*Webster v. Reproductive Health Services* (1989)
Anthony Lewis, *Editorial Response*
*Griswold v. Connecticut* (1965)

*Calder v. Bull* (1798)
Justice Thurgood Marshall, Bicentennial Remarks

II. Courts and Constitutional Authority (weeks 3 & 4)

September 19: Judicial Institutions

Brigham & Harrington, Chapter 2
Baum, Chapter 1
Judicial Organization
Alexander Hamilton, Federalist #79 and 80
Valley Forge College v. Americans United (1982)

September 21: Jurisdiction and Justiciability

Brigham & Harrington, Chapter 2
Baum, Chapter 3

Chisholm v. Georgia (1793)
Martin v. Hunter’s Lessee (1816)
Luther v. Borden (1849)
Flast v. Cohen (1958)
Laird v. Tatum (1972)
Seminole Tribe v. Florida (1996)

September 26: Justices and Judicial Decision-Making

Brigham & Harrington, Chapter 2
Baum, Chapter 2 & 4

Rehnquist, “A Random Thought on the Segregation Cases”
Joyce O’Connor, “Lobbying the Supreme Court”
Justice Sandra Day O’Connor in Webster
Toni Morrison, “Friday on the Potomac”


September 28: Justices and Judicial Decision-Making

Brigham & Harrington, Chapter 2
Baum, Chapter 5 & 6
III. Federalism and the States (weeks 5 & 6)

October 3 & 5: The Structure of Federalism

Brigham & Harrington, Chapter 3

*Alien Act* (1798)
*Virginia and Kentucky Resolutions* (1798)
*Delima v. Bidwell* (1901)
*Cherokee Nation v. Georgia* (1831)
*Worcester v. Georgia* (1832) [Xerox submission]

October 10 & 12: The Politics of Federalism

Brigham & Harrington, Chapter 3

*Barron v. Baltimore* (1833)
*Munn v. Illinois* (1877)
*Edwards v. California* (1941)
*National League of Cities v. Usery* (1976)
*Garcia v. San Antonio MTA* (1985)
*South Dakota v. Dole* (1987)
*NLRB v. Jones & Laughlin Steel Co.* (1937)

MID-TERM EXAMINATION: October 17

IV. Congress and Legislation (weeks 7.5-10)

October 19: Structure and Scope of Legislative Powers

Brigham & Harrington, Chapter 4
Federalist #51
Powell v. McCormick (1969)
McCulloch v. Maryland (1819)
Mississippi v. Johnson (1867)
Immigration and Naturalization Service v. Chada (1983)

October 24: Commerce and Police Power

Brigham & Harrington, Chapter 4

Gibbons v. Ogden (1824)
United States v. EC Knight Co. (1895)
Schecter Poultry v. United States (1935)
Catzenbach v. Mcclung (1964)

October 31: Taxing and Spending

Brigham & Harrington, Chapter 4

Pollock v. Farmer’s Loan and Trust Co. (1895)
United States v. Butler (1936)
Steward Machine Co. v. Davis (1937)
“The Death Tax for Whom”

November 2: Impeachment and Confirmation

Brigham & Harrington, Chapter 4

Mississippi v. Johnson (1867)
Articles of Impeachment against President Richard M. Nixon (1972)
Clarence Thomas Hearings (1991)
Jones v. Clinton (1997)
Nixon v. United States (1993)

November 7: Foreign Policy

War Powers Resolution (1973)
Iran Contra Affair, 100th Cong., 1st Sess. (1987)
Authorization to Use Military Force Act (2001)
V. The Presidency (weeks 10.5-13)

November 9 & 14: The Constitution’s President

Brigham & Harrington, Chapter 5

Alexander Hamilton, Federalist #70
Pres. Andrew Jackson’s Veto Message of 1832
United States v. U.S. District Court (1972)

Morrison v. Olson (1988)

November 16 & 21: Foreign Policy and War

Brigham & Harrington, Chapter 5

The Prize Cases (1863)
United States v. Curtiss-Wright Export Corp. (1936)
Goldwater v. Carter (1979)
Miroff, “The Theory of Plausible Deniability”
Ex Parte Milligan (1866)
Korematsu v. United States (1944)
Youngstown Sheet & Tube v. Sawyer (1952)
United States v. Richard M. Nixon (1972)

November 28: Privileges, Immunities, Accountability and Impeachment


VI. Administrating Constitutional Democracy (week 13.5 & 14)

November 30, December 3 & 7: Representation and Rights

Brigham & Harrington, Chapter 6 (TBA)

Brigham & Harrington, Chapter 7 (TBA)
FINAL EXAMINATION