Course Description

A study of the constitutional sources of power & restraint for the federal government as well as the American federal constitutional provisions concerning the organization of government and the powers, rights, duties and responsibilities of both the government and individual citizen. Major Supreme Court cases will be analyzed and critiqued. Prerequisites: PSC 141 and 142.

Justification

“American Constitutional Law II” (3 credit) is an advanced course that requires approximately 150 minutes of classroom time/direct instruction weekly for 15 weeks, and also meets for a two-hour final examination. In addition, students spend at least six hours weekly out-of-class on work including reading, researching, writing, and studying. Students are required to complete a mid-term and a final exam. Moreover, students are required to write a 1-2 page case brief for all cases assigned. In addition, students are required to participate in the Moot Court Simulation that focuses on our system of separated powers. That is, students will deliver an oral argument based on a hypothetical fact pattern to a panel of their classmates.

Text Books


Program Learning Outcomes

Below are the specific program learning outcomes addressed in this course:

- The student will critically analyze and critique political institutions and/or complex political issues.

1Because this is a syllabus, it is a guide for how the semester will unfold. To be clear, I reserve the right to change ANY aspect of the course as necessary.
• The student will demonstrate oral communication skills.
• The student will develop research skills.

Grading

Grades will be based on legal briefs, exams, and a moot court simulation.

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Legal Briefs (30 points total). Briefing cases not only helps you learn the material, but provides the basis for your informed participation in class discussions and oral arguments. To ensure that students are keeping up, I will collect case briefs at the start of each class. That is, you must write approximately a 1 page brief for all cases assigned, and you must submit your briefs on D2L (as one document) prior to the start of each class (Dropbox for each class will close at 12:30pm). To be clear, all assignments will be turned in via Dropbox by 12:30pm and they must be turned in as a word or pdf document. If an assignment is not turned in via Dropbox or it is not turned in as a word or pdf document, it will not be graded and you will earn a zero for the assignment.

Three of the briefs you turn in will be graded for grammar and accuracy. I will randomly choose which three briefs will be closely graded. That is, I will peruse three briefs to make sure they correctly summarize the facts, legal question(s), and legal reasoning of the cases. The other briefs will be given full credit if sufficient effort has been put into them (I will discuss what I mean by sufficient effort later in the semester).

1. Four closely graded briefs (3 points each).
2. Other briefs (21 points total).

Note: It’s critical not to fall behind with readings in this course; if I feel students are not adequately preparing for class I will ask to collect additional case briefs or may administer a short pop quiz at the beginning of class. It is worth noting, you are required to summarize the cases in your own words, because this will strengthen your understanding of them. Moreover, you are not allowed to copy summaries of cases from the internet. This is by definition plagiarism, and it will earn you an F for the course.

Oral Arguments (20 points total). All students will be required to give a 8-10 minute oral argument in front of a panel of three to five judges and will be required to serve as a judge. Concerning litigants, the order of litigants will be chosen randomly. If your name is called and you refuse to deliver your argument, then you will automatically lose 5 percent
on the assignment. If your name is called and you are absent, then you will lose 5 percent on the assignment (exceptions will be made for excused absences, but excused absences must be properly documented). Concerning judges, you will be expected to ask a minimum of 3 relevant questions over the course of two oral arguments. If you ask no questions as a judge during an oral argument, you will be replaced by a loquacious classmate because there will be no Clarence Thomas acolytes in this courtroom and you will automatically be deducted 5 points. Moreover, if you choose not to participate in the oral arguments as a litigant or judge, you will not earn higher than a C for the course.

1. Litigant during Oral Argument (10 points).
2. Judge during Oral Argument (10 points).

Exams (25 points total). There will be two exams: a midterm and a final. These will be weighted equally and will be take home exams. (This means each exam will be worth 25 points.) Because they are take home exams, you must upload a copy of your exam on D2l by the start of class on the day it is due. This timeline is non-negotiable. Exceptions to this will be made only in the most unusual of circumstances!

**Academic Integrity**

The following is taken from SFASU’s *Policy Manual* (2014), section on “Academic Integrity” (A-4): Academic integrity is a responsibility of all university faculty and students. Faculty members promote academic integrity in multiple ways including instruction on the components of academic honesty, as well as abiding by university policy on penalties for cheating and plagiarism. Definition of Academic Dishonesty: Academic dishonesty includes both cheating and plagiarism. Cheating includes but is not limited to (1) using or attempting to use unauthorized materials to aid in achieving a better grade on a component of a class; (2) the falsification or invention of any information, including citations, on an assigned exercise; and/or (3) helping or attempting to help another in an act of cheating or plagiarism. Plagiarism is presenting the words or ideas of another person as if they were your own. Examples of plagiarism are (1) submitting an assignment as if it were one’s own work when, in fact, it is at least partly the work of another; (2) submitting a work that has been purchased or otherwise obtained from an Internet source or another source; and (3) incorporating the words or ideas of an author into one’s paper without giving the author due credit.

Please read the complete policy at the following website: [http://www.sfasu.edu/policies/student_academic_dishonesty.pdf](http://www.sfasu.edu/policies/student_academic_dishonesty.pdf) All cases of academic dishonesty will be handled according to University policies and procedures (A-4.1). The consequences for academic dishonesty will be an “F” for the course. For details, students should refer to the SFA Policy Manual (2014) or the University’s General Bulletin, 2014-2015 section entitled “Academic Integrity” and other sources of University policy.
Withheld Grades

The following is taken from SFASU’s *Policy Manual* (2014), “Semester Grades Policy” (A-54): At the discretion of the instructor of record and with the approval of the academic chair/director, a grade of WH will be assigned only if the student cannot complete the course work because of unavoidable circumstances. **Students must complete the work within one calendar year from the end of the semester in which they receive a WH, or the grade automatically becomes an F.** If students register for the same course in future semesters, the WH will automatically become an F and will be counted as a repeated course for the purpose of computing the grade point average.

Students with Disabilities

To obtain disability related accommodations, alternate formats and/or auxiliary aids, students with disabilities must contact the Office of Disability Services (ODS), Human Services Building, and Room 325, 468-3004 / 468-1004 (TDD) as early as possible in the semester. Once verified, ODS will notify the course instructor and outline the accommodation and/or auxiliary aids to be provided. Failure to request services in a timely manner may delay your accommodations. For additional information, go to [http://www.sfasu.edu/disabilityservices/](http://www.sfasu.edu/disabilityservices/).

Acceptable Student Behavior

Classroom behavior should not interfere with the instructor’s ability to conduct the class or the ability of other students to learn from the instructional program (see the Student Conduct Code, policy D-34.1). Unacceptable or disruptive behavior will not be tolerated. Students who disrupt the learning environment may be asked to leave class and may be subject to judicial, academic or other penalties. This prohibition applies to all instructional forums, including electronic, classroom, labs, discussion groups, field trips, etc. The instructor shall have full discretion over what behavior is appropriate/inappropriate in the classroom. Students who do not attend class regularly or who perform poorly on class projects/exams may be referred to the Early Alert Program. This program provides students with recommendations for resources or other assistance that is available to help SFA students succeed.
Course Outline

August 27: Introduction
  • Introduction

August 29: Introduction Cont.
  • Writing about the Government: A Brief Style Guide

September 3: The Judiciary
  • Article III
    – Epstein and Walker p. 726
  • Judicial Review
    – Marbury v. Madison (1803)
    – Martin v. Hunter’s Lessee (1816)
  • Constraints on Judicial Power
    – Ex parte McCardle (1869)

September 5: The Judiciary/The Legislature
  • Constraints on Judicial Power
    – Baker v. Carr (1962)
    – Nixon v. United States (1993)
    – Flast v. Cohen (1968)
  • Article I
    – Epstein and Walker p. 721-725
  • Congressional Authority over Internal Affairs

2This is a tentative schedule, and I reserve the right to change the schedule as necessary.
September 10: The Legislature

- Congressional Authority over Internal Affairs
  - Gravel v. United States (1972)
- Sources and Scope of Legislative Powers
  - McCulloch v. Maryland (1819)
  - McGrain v. Daugherty (1927)

September 12: The Legislature

- Sources and Scope of Legislative Powers
  - Watkins v. United States (1957)
- Sources and Scope of Legislative Powers Continued
  - Barenblatt v. United States (1959)
  - South Carolina v. Katzenbach (1966)
- Article II
  - Epstein and Walker p. 725-726
- Faithful Execution of the Laws
  - In re Neagle (1890)

September 17: The Executive

- Domestic Powers of the President
  - National Labor Relations Board v. Canning (2014)
  - Myers v. United States (1926)

September 19: The Executive

- Domestic Powers of the President
  - Humphrey’s Executor v. United States (1935)
  - Mississippi v. Johnson (1867)
September 24: The Executive/Interbranch Interactions

- Domestic Powers of the President
  - *Ex parte Grossman* (1925)

- Domestic Powers

September 26: Interbranch Interactions

- Domestic Powers

- Powers over Foreign Affairs
  - *The Prize Cases* (1863)
  - *Ex parte Milligan* (1866)
  - *Korematsu v. United States* (1944)

October 1: Interbranch Interactions

- Powers over Foreign Affairs
  - *Youngstown Sheet & Tube Co. v. Sawyer* (1952)

October 3: Federalism

- The Doctrinal Cycle of Nation-State Relations
  - *McCulloch v. Maryland* (1819)
  - *Scott v. Sanford* (1857)
  - *Coyle v. Smith* (1919)
October 8: Federalism

- Nation-State Relations
  - New York v. United States (1992)
  - Printz v. United States (1997)
- Eleventh Amendment and Sovereign Immunity

October 10: Federalism

- National Preemption of State Laws
  - State of Missouri v. Holland (1920)
  - Arizona v. United States (2012)

October 15: Midterm Exam

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October 17: The Commerce Power

- Constitutional Foundations of Commerce Power
  - Gibbons v. Ogden (1824)
- Defining Interstate Commerce
  - United States v. E. C. Knight Co. (1895)
  - Stafford v. Wallace (1922)
  - Champion v. Ames (1903)

October 22: The Commerce Power

- Defining Interstate Commerce
  - Hammer v. Dagenhart (1918)
- The Supreme Court and the New Deal
  - A. L. A. Schecter Poultry Corp. v. United States (1935)
  - National Labor Relations Board v. Jones & Laughlin Steel Corporation (1937)
  - United States v. Darby (1941)
October 24: TBD

October 29: The Commerce Power

- The Supreme Court and the New Deal
  - *Wickard v. Filburn* (1942)

- The Era of Expansive Commerce Clause Jurisprudence
  - *Heart of Atlanta Motel, Inc. v. United States* (1964)

- Limits on the Commerce Power: The Republican Court Era

October 31: The Commerce Power

- Limits on the Commerce Power: The Republican Court Era
  - *Gonzales v. Raich* (2005)

- Commerce Power of the States
  - *Cooley v. Board of Wardens* (1852)
  - *Southern Pacific Company v. Arizona* (1945)

November 5: The Commerce Power

- Commerce Power of the States

November 7: Takings Clause

- What is a Taking?
  - *United States v. Causby* (1946)
  - *Pennsylvania Coal Co. v. Mahon* (1922) – D2L
  - *Penn Central Transportation Company v. City of New York* (1978)
  - *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) – on D2L
November 12: Takings Clause

- What is a Taking?
  - Lucas v. South Carolina Coastal Council (1992)

- What Constitutes a Public Use?
  - United States ex rel. Tennessee Valley Authority v. Welch (1946) – on D2L

November 14: The Takings Clause/Oral Argument Prep day

- What Constitutes a Public Use?
  - Berman v. Parker (1954)
  - Hawaii Housing Authority v. Midkiff (1984)

November 19: Oral Arguments


November 21: Oral Arguments


November 26: Thanksgiving Break!

- No class

November 28: Thanksgiving Break!

- No class

December 3: Oral Arguments


December 5: Oral Arguments


December 10: Final Exam

- Final Exam is due by 10:45am on D2L
Example Case Brief

YOUR NAME HERE
Schenck v. U.S. (1919)
249 U.S. 47

Facts:

• Charles Schenck, the general secretary for the Socialist Party of Philadelphia, had 15,000 pamphlets printed, urging resistance to the draft. Federal authorities arrested him for violating the Espionage Act. Specifically they charged that he attempted to obstruct the draft and that he illegally used the mail to do so.

Legal Question:

• Does the Espionage Act violate the First Amendment guarantee of Free Speech?

Holding:

• Yes. 9-0. Holmes wrote.

Legal Reasoning

• It is clear that the intended effect of the pamphlet was to influence people to obstruct the draft.

• In many placed and in ordinary times, what the defendant said would have been within their constitutional rights. But the character of every act depends on the circumstances in which it occurs. The most stringent protection of free speech does not protect a man from falsely shouting fire in a crowded movie theater.

• Main question is whether the words used are used in such circumstances and are of such a nature as to create a “Clear and Present Danger” that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. In this case, with the nation at war the words in the pamphlets do create a clear and present danger.