

**THE AMERICAN CONSTITUTION**  
Fall 2006  
Politics V53.0330/ Law & Society V62.0330

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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

John Brigham and Christine B. Harrington (forthcoming) *The Constitution: Law, Politics and Society. Volume I: The Government*. [BB]

Lawrence Baum (2003) *The Supreme Court*. 8th Edition. Washington, DC: CQ Press.

Richard M. Pious (2006) *The War on Terrorism and the Rule of Law*. LA: Roxbury Publishing Co.

## **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)*

US Attorney General Edwin Meese, "The Law of the Constitution"

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)  
*Elk Grove Schools v. Newdow* (2004)

September 26: Justices and Judicial Decision-Making

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

*In re Cheney*: The Scalia Memo (2004)  
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"

Recommended: Sheldon Goldman (1998) *Picking Federal Judges*. Yale University Press.

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]

*Silkwood v. Kerr-McGee* (1984)

*Baker v. State of Vermont* (1999)

*Nevada Dept of Resources v. Hibbs* (2003)

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)

*United States v. Lopez* (1995)

*Federal Maritime Comm. v. South Carolina Ports Auth.* (2002)

**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)  
*Schechter Poultry v. United States* (1935)  
*Katzenbach v. McClung* (1964)  
*United States v. Morrison* (2000)

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)  
*U.S. v. Nixon* (1974)  
*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

*The New York Times v. United States* (1971)

*United States v. U.S. District Court* (1972)

*Morrison v. Olson* (1988)

*George Bush and Lawrence Walsh, The Pardon of Sec. Weinberger*, (1992)

Oral arguments in *Clinton v. Jones* (1997)

November 16 & 21: Foreign Policy and War

Brigham & Harrington, Chapter 5

Richard M. Pious (2006) *The War on Terrorism and the Rule of Law*. Chapters TBA

*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)

*Hamdi v. Rumsfeld* (2004)

November 28: Privileges, Immunities, Accountability and Impeachment

Center for Constitutional Rights (2006) "Articles of Impeachment Against George W. Bush"

## **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**