

PSC 330-01C
Constitutional Law I
UWSP
Fall 2022
MW 3:30-4:45pm
SCI D223

Prof. John C. Blakeman

SCI D-337

Office hours: T, Th, 10:00am-12 noon. 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).

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. Constitutional litigation and Supreme Court interpretation of the Constitution are fundamentally part of the national political process, and ultimately affect the constitutional powers of political institutions in the United States. We categorize cases this semester according to four broad policy areas: the Court and Its Power; the Constitution and National Security; the Constitution and Economic Policy; and the Constitution and Democracy.

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 developments in American Constitutional Law;
- students will learn about the Court's role in interpreting the Constitution; and
- students will learn how constitutional law affects specific policy areas in American politics.

Participation and Attendance: I must take attendance every class period due to the potential need to engage in contact tracing in case there's a Covid-19 breakout. I don't have a strict attendance policy, but 25% of your course grade is based on participation. If you're not in class, you can't participate.

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 Canvas.
Final Paper	25%	
Online Final Exam	25%	In Canvas.

Online Midterm: ~~The online midterm exam listed above will consist of two essay questions answered in Canvas. 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 in Canvas 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.~~

Canvas: some cases and other course materials will be placed in the Canvas learning system.

Grade distribution:

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

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.

Final Paper: The writing assignment is due in Canvas no later than Friday December 9 at 5pm. NOTE: no extensions for the paper will be granted. You must upload your paper to the Canvas website for the course. I will only accept papers through Canvas, and all papers will be checked for plagiarism by Turnitin.com. You will not submit a hard copy of your paper. The writing assignment will be released later this semester. It will have a minimum word count of 2000 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: Please do not use your phones, laptops, or other electronic devices during class. If you need an exception to this rule please speak with me.

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 Canvas, and are either listed in the syllabus or will be announced in class.

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

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.

Course Schedule

September 7 Introduction

The Supreme Court and Judicial Power

Course days: September 12, 14, 19, 21

Read: The Constitution of the United States; Casebook 1161.

Introductory readings: skim

Constitutional Politics, 3-12

Sources of Judicial Review Authority 35-46

Alexander Hamilton, Federalist No. 78

Case: Marbury v. Madison, 46

Readings on constitutional interpretation: Congressional Research Service Report (In Canvas).

Read closely.

The Constitution, National Security, and Foreign Affairs

Course days: September 26, 28, October 3, 5, 10, 12

A note on the reading assignments: the page # after each of the sections below is the *start* of the section. You should at minimum skim the introductory sections. The page # number next the case name is where the case starts You should read the cases carefully. We will work through the cases chronologically.

Hamilton on Executive Power 169
External and Internal Affairs 249
An Executive Prerogative? 261
Treaties and Executive Agreements 276
The War Power 285

Cases:

The Prize Cases (1863) 276
Ex parte Milligan (1866) 278
E x Parte Merryman, in Canvas
Ex Parte Quirin, in Canvas
United States v. Curtiss-Wright Corp. (1936) 262
Korematsu v. United States (1944) 279
Youngstown Co. v. Sawyer (1952) 282
New York Times Co. v. United States (1971) 284
Goldwater v. Carter (1979) 292
Haig v. Agee (1981) 268
Dames & Moore v. Regan (1981) 293
Hamdi v. Rumsfeld (2004) 308
Hamdan v. Rumsfeld (2006) 311
Boumediene v. Bush (2008) 313
Zivotofsky v. Kerry (2015) 266
Holder v. Humanitarian Law Project (2010) 560
Trump v. Hawaii (2018) 270

The Constitution and Economic Liberty

Course days: October 17, 19, 24, 26, 31, November 2, 7, 9

The Meaning of Property 497
Madison's Essay on Property 498
The Commerce Clause 337
The Contract Clause 499
The Takings Clause 511
The Police Power 523
Substantive Due Process 529
Nationalization of the Economy 343
The New Deal Watershed 349
From National League to Garcia 360
The Spending and Taxing Powers 378

State Powers Revived 365

Cases:

The Debate over the National Bank (in Canvas)

Fletcher v. Peck (1810) 405046
McCulloch v. Maryland (1819) 320
Dartmouth College v. Woodward (1819) 505
Gibbons v. Ogden (1824) 340
Charles River Bridge v. Warren Bridge (1837) 507
Cooley v. Board of Wardens (1852) 342
The Legal Tender Cases (in D2L)
Slaughter-House Cases (1873) 525
Munn v. Illinois (1877) 527
Champion v. Ames (Lottery Case) (1903) 345
Lochner v. New York (1905) 533
Hammer v. Dagenhart (1918) 347
Bailey v. Drexel Furniture Co. (Child Labor Tax Case) (1922) 381
Home Bldg. & Loan Assn. v. Blaisdell (1934) 509
Carter v. Carter Coal Co. (1936) 351
Steward Machine Co. v. Davis (1937) 382
West Coast Hotel Co. v. Parrish (1937) 538
NLRB v. Jones & Laughlin (1937) 342
United States v. Darby (1941) 345
Wickard v. Filburn (1942) 346
Shelley v. Kraemer (1948) 952
Ferguson v. Skrupa (1963) 540
Heart of Atlanta Motel v. United States 955
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) 384
United States v. Lopez (1995) 370
United States v. Morrison (2000) 373
Gonzales v. Raich (2005) 376
Kelo v. City of New London (2005) 520
Congress Responds to Kelo 522
National Federation of Independent Business v. Sebelius (2012) 386
King v. Burwell 390
South Dakota v. Wayfair (2018) 394

The Constitution and the Right to Privacy

Course days: November 14, 16, 21, 28, 30. NO Class November 23.

NOTE:

Cases

Rights of Privacy 1055
Buck v Bell (1927) 1059
Griswold v Connecticut (1965) 1064

Stanley v Georgia (1969) 1061
Roe v Wade (1973) 1076
Bowers v Hardwick (1986) 1103
Planned Parenthood v Casey (1992) 1084
Lawrence v Texas (2003) 1105
Obergefell v Hodges (2015) 1107
Dobbs v Jackson Women's Health Organization (2022) In Canvas

December 5, 7, 12, 14: *Moore v. Harper*

Moore v Harper will be decided by the Court in the 2022-23 Term. The question posted by *Moore* is:

Whether a State's judicial branch may nullify the regulations governing the "Manner of holding Elections for Senators and Representatives . . . prescribed . . . by the Legislature thereof," U.S. CONST. art. I, § 4, cl. 1, and replace them with regulations of the state courts' own devising, based on vague state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a "fair" or "free" election.

For this section we will focus on a pending Supreme Court case. We will study the legal briefs that argue for and against the question and are filed with the Court for its review.

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 prompt 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.

PAPER RUBRIC

Criteria	▼ A excellent	▼ A-/B+	▼ B Very Good	▼ B-/C+	▼ C Satisfactory	▼ C- Unsatisfactory	▼ D Unsatisfactory	
▼ Grammar, Spelling, Sentence structure	Minimal grammatical, spelling, and structural errors.	Minimal grammatical, spelling, and structural errors. Generally no more than 2 per page.	More than 2 grammatical, spelling, or structural errors per page	↔			Paper contains an excessive number of grammatical, spelling, and structural errors	
▼ Style	Paper is written in clear prose; well written and argued.	↔		General style conventions are usually followed	↔			Style is poor, i.e. paper uses inappropriate narrative (such as 1 st person), colloquialisms, etc
▼ Structure of argument	Argument is clear, logical, supported by appropriate references to texts	↔		Argument is generally clear and logical, nominally supported	↔		Argument is unclear, structure of paper is illogical and does not substantiate the author's thesis	
▼ Use of assigned materials	Writer shows detailed and comprehensive familiarity with assigned materials and legal cases and the ability to incorporate them into a relevant, logical argument or analysis	↔		Writer shows some familiarity with assigned materials and legal cases and the limited ability to incorporate them into a relevant, logical argument or analysis	↔		Writer is generally unfamiliar with assigned materials and legal cases and is unable to incorporate them into the paper	
▼ Strength of Analysis	Writer shows clear understanding of the legal case and other materials and the outstanding ability to critically analyze and reflect upon them	↔		Writer shows nominal understanding of the legal case and other materials and the intermediate ability to critically analyze and reflect upon them	↔		Writer is unfamiliar with the legal case and other materials and is generally unable to critically analyze and reflect upon them	
▼ Word Count, Font	Word count and font and paper mechanics (margins, spacing,	↔			Font and paper mechanics are inconsistent	Paper does not meet word count requirements. Font and paper mechanics are	Paper does not meet word count requirements. Font and paper mechanics are	

	etc) are appropriate					inappropriate to 300 level university course.	inappropriate to 300 level university course.
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POLI 330-01

Fall 2020

Asynchronous option

If you have elected to complete POLI 330 asynchronously (online), then the following requirements apply to you.

1. All of the readings for the in-person course are the same.
2. You must take the midterm and final exams at the regularly scheduled times. Both exams will be administered in Canvas.
3. You must submit a final paper at the regularly scheduled time and per the instructions for the in-person class. The paper will be submitted to Canvas.
4. Instead of participating in classroom discussion, you will submit a written response paper on some of the assigned cases. These written responses will be submitted every two weeks. You must upload a Microsoft Word document to Canvas. Each paper must be a minimum of 500 words. See the specific assignment in Canvas. Late papers will not be accepted.

The grading for the asynchronous course is:

- 25% Online response papers submitted according to instructions/deadlines in Canvas
- 25% Midterm exam submitted in Canvas; same assignment as the in-person class
- 25% Final paper submitted in Canvas; same assignment as the in-person class
- 25% Final exam submitted in Canvas; same assignment as the in-person class

For the asynchronous online class I do not know if taped lectures will be available. Due to the Technology in DUC 112 it is unlikely that I can videotape the class. FERPA generally prohibits the taping of students unless all students sign a waiver.

In sum, POLI 330 as an asynchronous online class:

- is primarily an assigned reading course where you are responsible for completing the assigned readings according to your own schedule;
- is graded based on the same assignments in Canvas for the in-person course, *except* for the in-class participation; and
- there is minimal audio and video support available to the online section.

COVID-19 and UWSP

Students: Please note the following:

Face Coverings:

At all UW-Stevens Point campus locations, the wearing of face coverings is mandatory in all buildings, including classrooms, laboratories, studios, and other instructional spaces. Any student with a condition that impacts their use of a face covering should contact the Disability and Assistive Technology Center to discuss accommodations in classes. Please note that unless everyone is wearing a face covering, in-person classes cannot take place. This is university policy and not up to the discretion of individual instructors. Failure to adhere to this requirement could result in formal withdrawal from the course.

Other Guidance:

Please monitor your own health each day using the online screening tool. If you are not feeling well or believe you have been exposed to COVID-19, do not come to class; email your instructor and contact Student Health Service (715-346-4646).

As with any type of absence, students are expected to communicate their need to be absent and complete the course requirements as outlined in the syllabus.

Maintain a minimum of 6 feet of physical distance from others whenever possible.

Do not congregate in groups before or after class; stagger your arrival and departure from the classroom, lab, or meeting room.

Wash your hands or use appropriate hand sanitizer regularly and avoid touching your face.

Please maintain these same healthy practices outside the classroom.