

POLS/LSJ 360 Winter 2010
INTRODUCTION TO UNITED STATES CONSTITUTIONAL LAW

Seth W. Greenfest

swg2@u.washington.edu

Office hours and location: M,W 1:30-2:30 and by appt., Gowen 111

Phone: 206-554-1912

SAV 138

M, W

7:00 pm – 9:20 pm

This course on constitutional law examines role of the United States federal courts in the American political system. Focusing primarily on the United States Supreme Court, with additional discussion of the lower federal courts, we will look at the political and legal processes that have shaped constitutional development from the founding to the present. The course focuses on issues related to *separation-of-powers* and *federalism*, two important features of the American political system, with the goal of understanding why and how the United States federal courts participate in the political process. We will look at Supreme Court decisions on judicial power, economic regulation, legislative powers, and executive powers. We will consider the political context in which the Supreme Court works and the effect of Supreme Court power on democratic processes and electoral accountability. The course also examines court procedures, the development of the federal courts, and theories of constitutional interpretation.

This course does not cover constitutional protections for civil rights and civil liberties. Those important areas of constitutional law are covered in a different course, POLS/LSJ 361.

This course is designed for students with an interest in American political and legal institutions, legal processes, American political history, and the role of courts in society. No prior knowledge of Constitutional Law is expected.

TEXT. Louis Fisher and Katy J. Harriger, *American Constitutional Law, Volume 1: Constitutional Structures, Separated Powers and Federalism, 8th Edition*. Carolina Academic Press 2009. ISBN 978-1-59460-624-3. Available at the University Bookstore.

There are numerous law related websites that you might find useful, and many more websites that provide bad or misleading information. Some of the good ones are listed on the course website.

The course website is staff.washington.edu/swg2. The website will have information about the course and links to study questions, as well as other course related materials.

GRADING: Grading for this course will be based on five in-class quizzes, a midterm, a final, and class participation – each of these are discussed in more detail below.

Grading scale: Grading for all assignments will be on a 100 point scale with 60 points the lowest passing grade. There is a page linked to the course website that explains how the points between 60 and 100 correspond to the UW 4 point grade scale.

Your final grade will be calculated based on the percentages below.

Five short quizzes	30%	Jan 6; Jan 20; Feb 8; Feb 22; Feb 3; Mar 8
Midterm	26%	January 27 in class
Final	34%	March 15, 830 – 1020 PM, SAV 138
Class participation	10%	

Quizzes and exams: The quizzes will test your knowledge of the assigned cases and related constitutional controversies and your understanding of constitutional processes and concepts. *Quizzes* will consist of one or two short essay questions, asking you to analyze an important concept discussed recently in class. Out of the 6 quizzes, the lowest grade will be dropped. *Exams* will consist of short answer and short essay questions. The final exam is cumulative in the sense that it will require knowledge of major concepts discussed throughout the course.

Class participation. The class participation grade will be based on your constructive participation in class. There will be many opportunities for class participation, in a variety of forms including during office hours. Class time will be split between lecture and discussion. At any time, please feel free to ask questions. Your questions can prove vital to your own and your classmates' understanding and will contribute to productive discussions.

OFFICE HOURS AND EMAIL. My office hours and email Monday and Wednesday from 1:30 – 2:30 in Gowen 111. I am also available by appointment. Email sent between the hours of 9:00 AM and 5:00 PM Monday – Friday will generally receive a response during that time period. Email sent after 5:00 PM will most likely receive a response the next day. In periods immediately before an exam, I will announce additionally email availability.

PREPARING FOR CLASS. The readings for the class consist mostly of excerpts from judicial opinions in Supreme Court cases. Because judges write in the peculiar legitimating language of the law, these opinions can be difficult to understand. Judges do not write opinions in order to explain the issues in a case clearly. They are not trying to write so that a college student can study for an exam. They write opinions in an attempt to justify their rulings to the audience of specialists most interested in a case. They are producing arguments in favor of a particular outcome, not attempting to create an objective record of their reasoning in the case. Judges will sometimes deliberately obscure important issues in a case, offer misleading justifications, and omit very important facts or considerations.

As a result you will need to read between the lines to develop an adequate understanding of the cases. You will need to read each case several times, over a period of several days, before you will understand it. For most students, it takes considerable time and practice to learn to read and understand cases effectively. Reading should get easier as the term progresses. To help you prepare for class and exams, you should take the time to answer study questions and write briefs as you read the cases.

Study questions. Several sets of study questions will be made available on the course website during the quarter. The study questions are designed to help you as you read cases by drawing attention to some important aspects of the cases and readings. The study questions will help you to prepare for the exams. You should ask in class when you are not sure how to answer one of the study questions. Study questions may appear on exams in modified form.

Briefs. A brief is a short (about one page) written summary of a court case. I strongly recommend that you create a brief for each of the assigned cases during the quarter. Simply reading through the cases will not be sufficient to focus your mind on the most important elements of the case. Taking the time to create a written analysis of each case in your own words will help you to understand and remember the material. Your briefs may also be useful to you if you continue to study law after this class. There is no universally accepted format for a brief. You can decide on your own format. A few samples are posted on the course website.

I advise against using a highlighting pen. They are usually counter-productive when reading, analyzing, and trying to remember Supreme Court cases. I also advise against purchasing ready-made briefs of cases. Such products vary considerably in quality and will distract you with information about portions of a case that are not covered in the text or the course.

ACADEMIC CONDUCT. The University of Washington's Student Conduct code will be enforced, including the policy on plagiarism. The entire policy can be found at <http://www.polisci.washington.edu/Dept and Univ Policies.pdf>.

GRADE DISPUTES: If you have questions or concerns about the grade you received on an assignment or exam, we can discuss it. If you would like to contest the grade, we will follow the procedure outlined here:

I will discuss with you at your request any grades that I have given on assignments and exams. For assignments and exams, I will do my best to communicate the parameters of graded assignments and exams, and I encourage you to ask questions about these parameters. If you feel I have made an error, we will attempt to resolve the issue through the following procedure. Please note that I will only discuss issues with grading in the 7 days after the paper or exam has been handed back:

1. Wait a minimum of 24 hours after receiving your grade to contact me.
2. Put in writing the reasons why you are dissatisfied with your grade.
3. Bring your exam and your writing statement to my office hours and we will discuss the grade.
4. If I am convinced that your concerns are warranted I will re-read your assignment or exam.

5. If we are unable to come to a resolution, I will give your assignment or exam to another instructor to read.

DISABLED STUDENTS. If you would like to request accommodations due to a disability, please contact Disabled Student Services, 448 Schmitz Hall, 543-8924 (V/TDD). If you have a letter from Disabled Student Services indicating you require accommodations, please present the letter to me as soon as possible so that I can make necessary arrangements.

READING SCHEDULE/COURSE OUTLINE. You should complete each set of readings before the class meeting for the date listed on the schedule. The schedule indicates whether the reading is in the Fisher textbook or whether there are materials posted on the course website.

I will try to stay on this schedule, but will make adjustments if necessary. Adjustments in the readings schedule will be announced in class. The dates of exams will not change.

- January 4 Part One: Introduction to the Course and the Constitution
Fisher: 471-484
Web: Articles of Confederation
- January 6 The Constitution and Constitutional Politics
Fisher: 3-31
First in class quiz
- January 11 Introduction to judicial review: constitutional and statutory interpretation
Fisher: 33-48
Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
Web: *Lilly M. Ledbetter v. The Goodyear Tire & Rubber Company, Inc. (2007)*
- January 13 Judicial review continued: constraints, methods, controversy
Fisher 51-53; 55-75
Web: *Brown v. Board of Education (1953)*
- January 20 Getting into court: constitutional requirements
Fisher: 77-114
(Skip Bellotti, Poe, Baker, and Nixon)
Frothingham v. Mellon (1923)
Flast v. Cohen (1968)
Allen v. Wright (1984)
Web: *Smelt and Hammer v. US, State of CA (2009)*
Second in class quiz
- January 25 Judicial organization; Decision making
Fisher: 143-164
Midterm review
- January 27 Midterm, in class
- February 1 Part Two: Congressional Powers and Federal-State Relations
Early Developments
Fisher: 303-313, 314-320
McCulloch v Maryland (1819)
Gibbons v Ogden (1824)
- February 3 Commerce Power – Nationalization of the Economy

Fisher: 324-329
United States v E.C. Knight (1895) (website)
Champion v Ames (1903)
Hammer v Dagenhart (1918)
Stafford v Wallace (1922) (website)
Third in class quiz

February 8 The Great Depression and the New Deal Crisis
Fisher: 401-403; 332-342
Home Building and Loan Assn v Blaisdell (1934)
Carter v Carter Coal (1936)
NLRB v Jones and Laughlin Steel Company (1937)
United States v Darby (1941)
Wickard v Fillburn (1941)

February 10 Rehnquist Court Activism
Fisher: 342-358
United States v Lopez (1995)
United States v Morrison (2000)
Fourth in class quiz

February 17 Part Three: Interbranch interactions
Fisher: 167-179; 202-209
Hampton and Co v United States (1928)
Schechter Corp v United States (1935)

February 22 Statutory overrides
Web: *Religious Freedom Restoration Act (website)*
Web: *The Lilly Ledbetter Fair Pay Act of 2009 (website)*
Fifth in class quiz

February 24 Presidential powers during wartime emergencies
Fisher: 257-271
The Prize Cases (1863)
Ex Parte Milligan (1866)
Korematsu v United States (1944)
Youngstown Co v Sawyer (1952)
New York Times Company v United States (1971)

March 1 Military Tribunals
Readings TBA

March 3 Military Tribunals, continued
Readings TBA

March 8 Curbing the Court

Fisher: 435-468

Sixth in class quiz

March 10

Final review

March 15

Final exam 830 – 1020 PM