This course in Constitutional Law course focuses on those powers given to government by the U.S. Constitution. That document bestows these powers according to two broad distinctions: separation of powers and federalism. Our class sessions are structured around these distinctions. First, we look at the judiciary’s division between the legislative, executive, and judicial powers, touching upon subjects such as Congress’s taxing power, the President’s war powers, and the Judiciary’s role in Constitutional interpretation. Second, we turn to the division of powers between the state and national governments, including debates over the Commerce Clause, immigration, and the enforcement of the Civil War amendments. We will do so primarily through reading pertinent case law, seeking to understand the opinions of the justices and evaluate their fidelity to the document they interpret. Throughout, we also will consult four texts that comment upon either the role of the courts or the approach to Constitutional interpretation, comparing these to those arguments made by judges.

Academic Integrity

Academic dishonesty in any form will not be tolerated. Such dishonesty includes, but is not limited to, any form of cheating on exams or plagiarism on essays. Doing so will result in failure of the course and referral to the College for greater academic sanction.

Participation

This course will involve close readings of texts and significant amounts of class discussion of those texts. Students are expected to read the assignment for the class in a careful manner before coming to class. This requirement does not mean students cannot come to class with concerns and questions. Those should arise. However, they should come from a serious attempt prior to class to understand the readings. Furthermore, once in class, students are expected to participate in the discussions. I will call upon those not participating. If in doing so I find that students have not read the assignment in a sufficiently careful fashion, I may ask the student to leave the class. Finally, absences should be kept to a minimum. If any student misses more than 25% of class sessions, that student will fail the course.

Learning Disabilities

With proper notification from the student and from the College, I am happy to work with any reasonable accommodations concerning learning disabilities.

Assignments

Term Paper (45%) Exam (45%)

Participation: 10%

Please note that assignments turned in late will be penalized two points for every day late.
Grading Scale

A 93-100     C 73-77
A- 90-92     C- 70-72
B+ 88-89     D+ 68-69
B 83-87     D 63-67
B- 80-82     D- 60-62
C+ 78-79     F 0-59

Texts

Joseph Story, *Commentaries on the Constitution of the United States*

Larry Kramer, *The People Themselves*

Keith Whittington, *The Political Foundations of Judicial Supremacy*

David A. Strauss, *The Living Constitution*

Reading Packets (RP)

8/30: Introduction and the Judicial Power

Section 1: introduction—why Institutions/structure matters

Readings: Story, Book III, Ch. VII, *Department of Transportation v. AAR* (RP I: 3)

Section 2: “The Judicial power of the United States shall be vested”—Judicial Power: Vesting Clause

Readings: Story, Book III, Chapter XXXVIII (paragraphs 817-823); *Perez v. Mortgage Bankers Assoc.* (RP I: 7)

Section 3: “Shall hold their offices during good behaviour”


9/6: Interpreting the Laws

Section 1: “in law” Part I: Who should interpret: Judicial Review

Readings: Story, Book III, Ch. IV, XXXVIII (par. 817-821); *Marbury v. Madison* (RP I: 17); *Eakin v. Raub* (RP I: 23; *Cooper v. Aaron* (RP I: 25).
Section 2: “in law” Part II: How to interpret


9/13: Interpreting the Laws by Adjudicating Cases

Section 1: “and equity”

Readings: Story, “On Equity” (RPI 27); *Willard v. Tayloe* (RP I: 29); *Brown v. Board II* (RP I: 35); *Swann v. Charlotte Mecklenburg* (RP I: 36)

Section 2: “Cases....Controversies”

Readings: *Flast v. Cohen* (RP I: 45); *Lujan v. Defenders of Wildlife* (RP I: 56)

Section 3: Appellate Powers


9/20:

Section 1: Political Questions

Readings: *Marbury v. Madison* (RP I: 74); *Luther v Borden* (RP I: 82); *Baker v. Carr* (RP I: 86)

Section 2: Judicial Perspective I: Contesting Judicial Review

Readings: Larry Kramer, *The People Themselves* (Intro, Chs. 2-5, Epilogue)

Section 3: Non-Delegation


10/4: Powers of Congress

Section 1: Coin money

Readings: *Hepburn v. Griswold* (RP I: 129); *Legal Tender Cases (1884)* (RP I: 142)

Section 2: Taxing Power


Section 3: Territories


Executive Power

10/11:

Section 1: What is executive power?

Readings: Story, Book III, Chapter XXXVI; *In Re Neagle* (RP I: 198)

Section 2: Appointment and Removal Power


10/18: War Powers

Section 1: War Powers and Detention
Readings: *Ex Parte Merryman* (RP II: 44); *Hamdi v. Rumsfeld* (RP II: 50)

Section 2: Detention and Congressional Restraint

Readings: *Ex Parte Quirin* (RP II: 68); *Crockett v. Reagan* (RP II: 77)

10/25: Other Presidential Powers/Judicial Perspective II

Section 1: Executive Privilege


Section 2: Pardoning Power

Readings: *United States v. Wilson* (RP II: 98); *Biddle v. Perovich* (RP II: 101)

Section 3: Judicial Perspectives II: Political Foundations of Judicial Supremacy

Readings: Whittington, *PFJS* (Chs. 1-2)

Federalism

11/1: Judicial perspectives and JR

Section 1: Judicial Perspectives II

Readings: Whittington, *PFJS* (Chs. 5-6)

Section 2: Judicial Review in Federalism

Readings: *Martin v. Hunter’s Lessee* (RP II: 102); *Cohens v. Virginia* (RP II: 107)

Section 3: Necessary and Proper Clause

Readings: Story, Book III, Chapter XXIV; *McCulloch v. Maryland* (RP II: 127); *United States v. Comstock* (RP II: 137)
11/8: Commerce Clause
Section 1: Commerce Clause I:

Readings: Story, Book III, Chapter XV; Gibbons v. Ogden (RP II: 154); Cooley v. Board of Wardens (RP II: 163)

Section 2: Commerce Clause II:

Readings: U.S. v. E.C. Knight (RP II: 171); NLRB v. Jones (RP II: 177); Wickard v. Filburn (RP II: 185)

11/15: Commerce Clause and Police Power
Section 1: Commerce Clause III

Readings: U.S. v. Lopez (RP II: 191); Gonzalez v. Raich (RP II: 200); NFIB v. Sebelius (RP III: 3)

Section 2: Police power


11/29: National/State Cooperation
Section 1: 10th Amendment/Federalism


Section 2: Spending Power

Readings: South Dakota v. Dole (RP III: 99); NFIB v. Sebelius (RP III: 106); Santa Clara v. Trump (District Court)(RP III: 122)

12/6: Immigration, Elections, and Conclusion
Section 1: Naturalization/Immigration Power
Readings: *Chinese Exclusion Cases* (RP III: 134); *Plyler v. Doe* (RP III: 144); *U.S. v. AZ* (RP III: 156)

Section 2: Federalism and National Elections

Readings: Story, Book III, Chapter 11, (par. 408-412); *Term Limits v. Thornton* (RP III: 178)

Section 3: Enforcement of Civil War Amendments

Readings: *South Carolina v. Katzenbach* (RP III: 194); *Shelby County v. Holder* (RP III: 206)