

POL 743: Constitutional Law I

Dr. Carrington
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Office Hours: M-W 2:00pm-3:00pm
T-Th 10:00am-11:00am
By Appointment

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”

Readings: *United States v. Benjamin More* (circuit court)(RP I: 9); *American Insurance Company v. Cantor* (RP I: 13); “Articles of Impeachment against Justice Chase” (RP I: 16)

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

Readings: Story, Bk. III, Ch. V; *McCulloch v. MD (excerpt)* (RP I: 25); *State of Missouri v. Holland (excerpt)* (RP I: 26); *Trope v. Dulles (Excerpt)*(RP I: 26); *Obergefell v. Hodges (excerpt)*(RP I: 27)

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

Readings: *Durousseau v. United States* (RP I: 62); *Martin v. Hunter’s Lessee* (RP: 66); *Ex Parte McCardle* (RP I: 72)

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)*

Legislative power

9/27: Nature and Composition of the Legislative Branch

Section 1: Legislative Power

Readings: Story, Book III, Chapter VIII

Section 2: Legislative Procedures

Readings: *INS v. Chadha* (RP I: 97); *Powell v. McCormack* (RP I: 108)

Section 3: Non-Delegation

Readings: *Wayman v. Southard* (RP I: 115); *J.W. Hampton v. U.S.* (RP I: 118); *Chevron v. NRDC*
(RP I: 124)

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

Readings: *Pollock v. Farmer's Trust and Loan* (RP I: 152); *Bailey v. Drexel Furniture Company*
(RP I: 162); *United States v. Butler* (RP I: 167); *Helvering v. Davis* (RP I: 173)

Section 3: Territories

Readings: *Dred Scott v. Sandford* (RP I: 176); *Downes v. Bidwell* (RP I: 192)

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

Readings: *Myers v. U.S.* (RP II: 2); *U.S. v. Humphrey's Executor* (RP II: 22); *Morrison v. Olson*
(RP II: 27)

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

Readings: *U.S. v. Nixon* (RP II: 85); *Clinton v. Jones* (RP II: 91)

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

Readings: *City of Miln v. New York* (RP III: 33); *Champion v. Ames* (RP III: 53)

11/29: National/State Cooperation

Section 1: 10th Amendment/Federalism

Readings: *Prigg v. Pennsylvania* (RP III: 61); *Printz v. U.S.* (RP III: 76); *Garcia v. San Antonio*
Metropolitan Transit Authority (RP III: 88)

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)