

Brigham Young University

**Political Science 360**

**The American Federal System (Constitutional Law)**

B. Daynes  
Winter 2009  
346 MARB  
5:00-6:45 MWF  
Office hour: Wed. 10-11

**COURSE REQUIREMENTS**

**20% of your grade** will be based on an **oral analysis** of one case, assigned by the instructor, that appears on the reading list.<sup>1</sup> You are expected to review thoroughly the implications of the case, **focusing** on the social and political impact of the Court's decision. This should take approximately 15-20 minutes of the class period.<sup>2</sup> (Note: it is important that you make every effort to be there on the day the case is assigned since the class will not be delayed to wait for you to appear. In case of illness or crisis, a make-up will have to be arranged with the instructor. If you have no valid reason for missing your presentation, 5% will be taken from the grade received on your make-up).

**Guidelines for case reviews:**

1. The **Court membership** deciding the case
2. The **analysis** of the argument and opinion of the **majority** and any **concurrences** and **dissents**.
3. The political and social consequence of the case

I will also pay attention to the **facility** with which you **conduct any discussion** on the case; your **total knowledge** of the **case**; and the **method of presentation**.

NOTE: For your presentation you **MUST READ the original decision** in **U.S. Reports** (in HBLL or in the Law Library) or on the web where the complete version can be found in such

**30% of your grade** will be based on a **10-12 page paper**, double spaced (with 12 font in Times New Roman), which will be due **not later** than **April 3** **during class time**, exploring the social and political impact of a case of your own choice. The case should be **different** from that which you prepared for your oral presentation. The case chosen

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<sup>1</sup> I will assign one or two of you to the case, depending on the size of the class after the first week.

<sup>2</sup> The time of the presentation may vary with the complexity of the case and the number of students in the class. The instructor will make the final determination on this.

must be directly related to the subject matter of the course. This means that no civil rights or liberties cases will be accepted. The case selected must be cleared with me not later than **March 20**. In a 10 page paper, for example, at least 4 pages should be devoted at the end to the political and social implications of the decision. The first 6 pages will look at the specific issues in question, the nature of the Court at the time of the decision, and the decision itself.<sup>3</sup> This format should be strictly adhered to. Please remember to do the following on our research paper:

- 1) Paginate
- 2) Staple pages
- 3) Keep a copy of your work;
- 4) Plan in advance before computer failure;
- 5) Do not rely on or list *Wikipedia* sources in your paper
- 6) Use “endnotes,” “footnotes” or “in-text notes” according to Turabian style or *Chicago Manual of Style*;
- 7) Pay strict attention to the length of the paper requested;
- 8) Margins should be slightly more than one inch;
- 9) Whenever you list a case name it should be *italicized* or *underlined* with a “v.” in between the parties names; you also need to fully document the case the first time you mention it;
- 10) Direct quotations must ALWAYS have a source citation;
- 11) Submit a statement with your paper indicating that you did read the full and original case decision.

**20% of your grade** will be based on a **midterm examination** to be given about **March 27**, unless there are extenuating circumstances.

**30% of your grade** will be based on a comprehensive **final examination** to be given at the regularly scheduled time, which is scheduled for 22 April 2009 from 5:45 until 7:45 PM. Please do not **plan other activities** for this time. **Everyone will take the exam at the scheduled hour in this room, unless you have an emergency situation come up, or unless the University excuses you at this hour.**

**An additional requirement, but one which shall be ungraded, is the participation in three of three formal discussions. Although ungraded, no one can pass the course without participating in at least two of the discussions.** Should you miss a discussion for a legitimate reason, you will be asked to make it up writing a two-page paper--double spaced--on the general discussion question;

The specific discussion question is not listed on the reading list, rather, the general topic for discussion appears.

The particular question will be made known on the day scheduled for discussion.

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<sup>3</sup> While late papers will be accepted, 5% will be taken off for each 24 hour period (except Sundays) from the grade you would have received had it been turned in on time.

On discussion days, seating in the classroom will be by Discussion Groups assigned by the instructor in the second week of the course.

Discussions will attempt to either generate information, develop ideas, evaluate alternatives, or a combination of all of these.

Students are to purchase a number of **plastic transparencies** for overhead projections to use during discussion days. In addition students will have with them at least **one non-permanent multi-colored overhead projection pen**, and a **wet paper towel or cloth** to erase unwanted marks on the plastic. Group reasoning and/or conclusions that come from the discussions will be written on the overheads and will be handed in after each group discussion.

.One Group will be selected each discussion day and asked to share their discussion results with the rest of the class.

### **GRADING POLICY:**

I repeat here the section on what grades mean from the BYU Bulletin: Undergraduate Catalog: (p.25):

The grade given in a course is the teacher's evaluation of the student's performance, achievement, and understanding in that subject as covered in the class. The following adjectives indicated the meaning of the letter grade:

<b>A</b>	<b>Excellent</b>
<b>B</b>	<b>Good</b>
<b>C</b>	<b>Satisfactory</b>
<b>D</b>	<b>Minimum passing</b>
<b>E</b>	<b>Unacceptable</b>

Hence, the grade **A** means that the student's performance, achievement, and understanding were excellent in the portion of the subject covered in the class.

There are prerequisites that qualify students to be admitted to the more advanced classes offered by a department. A senior has added experience, understanding, and preparation and, consequently, progresses in courses that would have been impossible when the student was a freshman. The level of performance, achievement, and understanding required to qualify for each grade that carries credit. . . is higher in a more advanced class than in those classes that precede it, and the student is prepared to work at this higher level.

## STATEMENT REGARDING PLAGIARISM AND SEX DISCRIMINATION<sup>3</sup>

While all students sign the honor code, there are still specific skills most students need to master over time in order to correctly cite sources, especially in this age of the internet; as well as deal with the stress and strain of college life without resorting to cheating. Please know that as your professor I will notice instances of **cheating on exams** or **plagiarizing on papers**. Brigham Young University does not tolerate plagiarism. When a student uses a purchased research paper, the work of another, the ideas or words of another, or portions therefrom, and represents this as his or her own work without giving proper credit, then that student has plagiarized the source. Any student who . . . plagiarizes the work of another [or cheats on any exam or assignment] risks a failing grade on the particular assignment, a failing grade in the class, and appearance before the Honor Code Council. You may want to see <http://www.byu.edu/honorcode> for specific examples of intentional, inadvertent plagiarism.

**Title IX of the Education Amendments of 1972** prohibits **sex discrimination** against any participant in an educational program or activity that receives federal funds. The act is intended to eliminate sex discrimination in education. Title IX covers discrimination in programs, admissions, activities, and student-to-student sexual harassment. BYU's policy against sexual harassment extends not only to employees of the university but to students as well. If you encounter unlawful sexual harassment or gender based discrimination, please talk to your professor; contact the Equal Opportunity Office at 422-5895 or 367-5689 (24 hours); or contact the Honor Code Office at 422-2847.

Brigham Young University is committed to providing a working and learning atmosphere which reasonably accommodates qualified persons with disabilities. If you have any **disability** which may impair your ability to complete this course successfully, please contact the University Accessibility Center (422-2767). Reasonable academic accommodations are reviewed for all students who have qualified documented disabilities. Services are coordinated with the student and instructor by the SSD office. If you need assistance or if you feel you have been unlawfully discriminated against on the basis of disability, you may seek resolution through established grievance policy and procedures. You should contact the Equal Opportunity Office at 422-5895, D-282 ASB.

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<sup>3</sup> Portions of this statement was developed by our former Dean, Clayne Pope, of the College of Family, Home and Social Science.

## BOOKS FOR PURCHASE

- .Epstein, Lee and Thomas G. Walker, *Constitutional Law for a Changing America: Institutional powers and Constraints*, 6<sup>th</sup> ed.(Congressional Quarterly, 2007).
- .Baum, Lawrence, *The Supreme Court*, 9<sup>th</sup> ed. (Congressional Quarterly, 2007)
- .Pohlman, H. L., *Constitutional Debate in Action: Governmental Powers*, 2<sup>nd</sup> ed. (Roman & Littlefield, 2005).
- .Toobin, Jeffrey, *The Nine: Inside the Secret World of the Supreme Court* (Doubleday, 2007).

## COURSE OUTLINE:<sup>4</sup>

### I. INTRODUCTION<sup>5</sup> (March 9)

Toobin, *Prologue*

#### A. Reasons for the Study of Constitutional Law ( March 9)

.no reading

#### B. The Pre-Constitutional and Constitution (March 11)

.Epstein/Walker, pp. 3-12

.Articles of Confederation @ <http://www.yale.edu/lawweb/avalon/artconf.htm>

### II. THE COURT: CASES AND DECISIONS: (March 11)

.Baum, chapters 3-4

.Epstein/Walker, chapter 1

.Toobin, pp. 30-32; 215; 263

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<sup>4</sup> While we will attempt to adhere to this schedule as best we can, with its dates and topics, it is subject to change in the event of extenuating circumstances.

<sup>5</sup> NOTE: It is essential for the success of the this course that all of you keep up with the reading. I will be calling on you to review the cases, so please be prepared.

### III. THE COURT AND JUDGES: (March 13)

.Baum, chapters 2, and 5

.Epstein\Walker, pp. 62-65

.Toobin

Stability of the Court, p. 237;

Chief Justice, pp. 28-32; 120-124; 253; 272; 281-82;

Appointment to the Court, chapter 19;

Death threats against the Justices, pp. 54, 248-251;

Retirement, pp. 23-25; 238.

### IV. BUILDING THE CURRENT COURT (March 13)

Toobin:

Chapters 1-3; 5-6; 19-22; 24;

Budget, p. 198;

Weekly conferences, pp. 28-30, 308;

Seniority tradition, p. 30;

Opinion assignments, pp. 28-30; 102; 135; 222-223;

Oral argument, pp. 46; 106; 130; 219;

Law clerks, pp. 86-88; 152; 155-157; 174-75; 279; 317;

Female justices, pp. 17-18; 70; 260; 282-83; 285;

Former judges' appointments, pp. 63; 292-293;

Hispanic candidates, pp. 262; 267-70;

Impeachment threats against justices, pp. 198-99; 248; 250;

International influence on the Court, pp. 185-86; 190; 195-99; 208; 315;

Voting procedures, p. 30;

Note the pictures and commentary in the middle of the book.

### V. CONSTITUTIONAL BASES OF JUDICIAL POWER--JUDICIAL REVIEW

(March 16)

.*MARBURY v. MADISON*, 5 US 137 (1804), pp.68-79.<sup>7</sup>

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<sup>7</sup>The pages that follow the case are from Epstein/Walker, *Constitutional Law for a Changing America: Institutional powers and Constraints*, 6<sup>th</sup> ed. (CQ, 2007) unless otherwise noted. The most important cases will be printed in CAPITAL LETTERS. NOTE ALSO: The numbers that follow the case name and the YEAR in parentheses refer to the place where the ORIGINAL CASE may be found in *U.S. REPORTS*. *U.S. REPORTS* may be found in either HBL on the 1st level, or in the law school. These numbers are also needed to locate this case on FINDLAW and other web links.

## V. CONSTITUTIONAL BASES OF JUDICIAL POWER--JUDICIAL REVIEW

(March 16)---cont.

- .*Eakin v. Raub*, 12 S&R 330 (1825), pp. 89-94.
- .*MARTIN v. HUNTER'S LESEE*, 14 US 304 (1816), pp. 79-89.
- .*EX PARTE MCCARDLE*, 74 US 506 (1869), pp. 94-97.
- .*Dred Scott v. Sandford*, 60 US 393 (1857).<sup>4</sup>

## VI. CONSTITUTIONAL BASES OF LEGISLATIVE POWER

### A. Legislative "Immunity" (March 18)

- .*POWELL v. MCCORMACK*, 395 US 486 (1969), pp. 134-139.
- .*GRAVEL v. U.S.*, 408 US 606 (1972), pp. 149-153.
- .*Hutchinson v. Proxmire*, 443 U.S. 111 (1979)—CQ Case Archive<sup>5</sup>

### B. Legislative "Investigative" Power (March 18, 20)

- .*WATKINS v. U.S.*, 354 US 178 (1956), pp. 169-173.
- .*BARENBLATT V. U.S.*, 360 US 109 (1959), pp. 173-179.

### C. Apportionment and Representative Government (March 20)

- .*BAKER v. CARR*, 369 US 186 (1962), pp. 105-111.

### D. Legislative Veto (March 20)

- . *IMMIGRATION AND NATURALIZATION SERVICE v. CHADHA*, 462 US 919 (1983), pp. 278-284.

### E. Congressional-Presidential relations: Signing Statements (March 20)

Epstein/Walker, pp. 219-221.

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<sup>4</sup> This case can be found at <http://www.findlaw.com/casecode/supreme.html> under 'U.S. Supreme Court Opinion,' push "go to", then "citation search" and put in *60 U.S. 393*.

<sup>5</sup> You must register to get this case using the registration number on the back of the front cover and following the instructions given you. It will be under "The Legislature: Congressional authority." If you don't have this service because you are using a "used book" you will have to locate the case in Findlaw on the web following the above instructions in footnote 4.

**VII. CONSTITUTIONAL BASES OF EXECUTIVE POWER** (March 23, 25)

- .*MYERS v. U.S.*, 272 US 52 (1926), pp. 230-235.
- .*HUMPHREY'S EXECUTOR v. U.S.*, 295 US 602 (1935), pp.236-239.
- .*YOUNGSTOWN SHEET AND TUBE CO. v. SAWYER*, pp.311-317.  
Pohlman, chapter 4.
- .*U.S. v. NIXON*, 418 US 683 (1974), pp. 240-245.  
Pohlman, chapter 5  
Toobin, p. 176.
- .*HAMDI v. RUMSFELD*, 542 US 507 (2004),pp. 322-329.  
Toobin, chapter 18
- .*HAMDON v. RUNSFELD*, 548 US \_\_\_\_ (2006),pp. 97-104; 329-336.  
Toobin, pp. 277; 319-22.

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**MIDTERM EXAMINATION**..... (March 27)  
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**A. President as Chief Executive** (March 30)

- .*Raines v. Byrd*, 117 S. Ct. 2312 (1997)—CQ Case Archives, or FindLaw
- .*CLINTON v. CITY of NEW YORK*, 118 S. Ct. 2091 (1998), pp.215-219.
- .*CLINTON v. JONES*, 117 S. Ct. 1636 (1997), pp. 252-259.

**B. Presidential Elections:** (March 30)

- .*BUSH v. GORE*, 531 U.S. 98 (2000), pp. 195-204.

**C. Impeachment:** (March 30)

- .*NIXON v. U. S.*, 506 U.S. 224 (1993), pp. 11-117.

**D.. Presidential Power in Foreign Affairs:** (April 1)

- .*U.S. v. CURTISS-WRIGHT*, 299 US 304 (1936), pp. 179-185.
- .*MISSOURI v. HOLLAND*, 252 US 416 (1920), pp. 407-409.
- .*Goldwater v. Carter*, 444 US 996 (1979)—CQ Case Archives or Findlaw.
- .*Dames & Moore v. Regan*, 453 U.S. 654 (1981), pp. 317-320.

**E. Executive War Powers: (April 3, 6)**

*.PRIZE CASES*, 67 US 635 (1862), pp. 289-294.  
*.EX PARTE MILLIGAN*, 71 US 2 (1866), pp. 294-300.  
*.Hirabayashi v. U.S.*, 320 US 81 (1943)—CQ Case Archives or Findlaw  
*.KOREMATSU v. U.S.*, 323 US 214 (1944), pp.306-311.  
Pohlman, chapter 3  
*Topaz*

**VIII. CONSTITUTIONAL BASIS OF FEDERALISM**

**A. Nation-State Relations: (April 6)**

*.MCCULLOCH v. MARYLAND*, 17 US 216 (1819), pp. 346-50.  
*.National League of Cities v. Usery*, 426 U.S. 833 (1976), pp. 367-73  
*.GARCIA v. SAMTA*, 469 US 528 (1985), pp. 374-79.

**B. Federalism and Commerce: (April 8, 10)**

*.GIBBONS v. OGDEN*, 22 US 1 (1824), pp. 426-432.  
*.SLAUGHTER HOUSE CASES*, 16 Wall 36 (1873), pp. 605-10.  
*.HAMMER v. DAGENHART*, 247 US 251 (1918), pp. 360-65.  
*.SCHECHTER POULTRY CORP. v. U.S.*, 295 US 495 (1935), pp. 443-448..  
*NATIONAL LABOR RELATIONS BOARD v. JONES AND LAUGHLIN .STEEL CORP.*, 301 US 1 (1937), pp. 453-59.  
Pohlman, chapter 2  
*.U.S. v. DARBY LUMBER CO.*, 312 US 100 (1941), pp. 365-67.  
*.WICKARD v. FILBURN*, 317 US 111 (1942), pp. 461-65.  
*.Southern Pacific Co. v. Arizona*, 325 U. S. 761 (1945), pp. 496-99.  
*.U.S. v. LOPEZ*, 514 U.S. 549 (1995), pp. 465-70.  
Toobin, pp. 81-85; 99-100; 237; 301-02.  
*DISTRICT OF COLUMBIA v. HELLER*, 554 U.S. \_\_\_\_ (2008)-- Findlaw

**IX. WHAT CAN WE EXPECT OF THE FUTURE OF THE COURT? (April 13)**

Toobin, chapter 25; *Epilogue*  
Baum, chapter 6

**X. FINAL EXAM .....22 April 2009; 5:45-7:45 PM**