Brigham Young University

Political Science 360

The American Federal System (Constitutional Law)

Winter 2011—second block

B. Daynes

346 MARB
MWF 12:00-1:45 PM

Office hour: Tues. 9:30-10:30; 1-2

Course requirements:

Because of the unusual nature of this course, viz., it is a second block class set up to accommodate both state legislative interns as well as non-interns, we will not be meeting as a class until the state legislature ends its session on 10 March. We won’t meet, then, until Monday, the 14th of March. But since we will have only five weeks of class meetings left we will treat the first two weeks of the course as an independent study course, where you will have an opportunity to do reading and writing that we would have done had we met from the first day of the second block.

In order for us to gain background on the Supreme Court and on the way judges set about judging cases, I want each student in the class to comply with the following requirements prior to our first meeting on March 14th:

10% of your grade will be based on a five-page paper where each student will thoroughly review Lawrence Baum’s, The Supreme Court, 10th edition (CQ Press, 2010); This will be due on 14 March in class.

10% of your grade will be based on a five-page paper where each student will thoroughly review David O’Brien’s, Judges on Judging: Views from the Bench, 3rd edition (CQ Press, 2009). This will be due on 14 March in class.

The five page papers should comply with the following format:

1) The first two pages should highlight what the author/authors covered in the two books;
2) The next two pages should assess the political consequences of what you have highlighted in the book;
3) The final page should focus on what you have learned from the reading that you did not previously know about how the Court and justices make decisions.
The rest of the course credit will be completed once we meet together and will be based on the following:

30% of your grade will be based on a research paper entitled The Consequences of Court decision making on American democracy. This will be written in two draft stages. Your first draft worth 10% of your grade will be due not later than 23 March in class. The final draft of your paper worth 20% of your grade will be due not later than April 6 in class.

This paper is to take account of the first two books you reviewed prior to coming to class as well as the many cases we will have read over the course of the term.

You will also be asked to use not only the in-class references, but to also use outside sources beyond the course books. All that you write should be thoroughly documented.

The format for the final draft of the paper—unlike the first draft—will be as follows:

1. First construct a thesis statement that you will keep in mind throughout the paper. It can be more than one sentence. In the thesis statement your conclusions should be suggested as well as giving the reader guidelines to your main arguments. It can be put in the form of an If this, then that format, or a Given this, then that format, or it may be in the form of an analytical question or statement.

2. Your paper must be fully documented with footnotes, endnotes or intext notes.

3. To write this paper, use outside research material which should include primary sources such as original cases, government documents, judges’ speeches and interactions with other policy makers; as well as secondary sources from reputable scholars. I should see evidence of both.

4. The format should rely on the following style manuals, Turabian’s, A Manual for Writers of Research Papers, Theses, and Dissertations, 7th edition; or The Chicago Manual of Style, 15th or 16th edition.

5. The font for the paper should be no larger than “12” in Times New Roman.

6. Please do not use Wikipedia as a source.

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1 This abbreviated listing of guidelines was inspired by a more complete listing first put together by Prof. Ray Christensen in our Department.

2 Outside material would include sources that we are not using in class.
7. Give a source for every quotation; or every thought that is not your own.

8. Make sure you have no spelling, typographical or grammatical errors in the paper. Please number the pages and put the paper together with a staple.

9. Present your ideas as clearly as possible. Cut out unnecessary words, and seek to use the "best word" regardless of its length or complexity.

10. Avoid colloquial expressions, trite phrases and inflated jargon.

11. Avoid excessive use of lengthy quotations.

12. Tightly organize your paper, and avoid padding it.

20% of your grade will be based on two midterms to be administered on March 21 and on April 4.

20% of your grade will be based on a comprehensive final examination to be administered on April 20. Please do not let anything else interfere with this date.

10% of your grade will be based on an oral presentation of one of the cases on the syllabus that will be assigned to you. Your oral will be given on the date it appears on the syllabus.

The following guidelines should be used when preparing the oral analysis of the case:

You are expected to review thoroughly the implications of the case, focusing on the social and political impact of the Court’s decision. You will also take account of who the justices are sitting on the Court; you will also assess the argument describing the majority opinion and any concurrences and/or dissents. You will then focus our attention on the social and political consequences of the case on our political system. Why was it important?

This should take approximately 10-15 minutes of the class period.³ (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

³ 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.
no valid reason for missing your presentation, 5% will be taken from the grade received on your make-up).

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.

If you use a power point presentation to assist you, please send a copy of your power point to me with your last name first: example:

Daynes-- Korematsu

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.

GRADING POLICY:

I repeat here the section on what grades mean from the BYU Bulletin: Undergraduate Catalog:

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:

A    Excellent
B    Good
C    Satisfactory
D    Minimum passing
E    Unacceptable

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.

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.

IV. STATEMENT REGARDING PLAGIARISM:

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 new 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. General information about the honor code can be found at honorcode.byu.edu. Details about Academic Honesty are found at http://honorcode.byu.edu/content/academic-honesty-details.

Writing submitted for credit at BYU must consist of the student's own ideas presented in sentences and paragraphs of his or her own construction. The work of other writers or speakers may be included when appropriate (as in a research paper or book review), but such material must support the student's own work (not substitute for it) and must be clearly identified by appropriate introduction and punctuation and by footnoting or other standard referencing.

The substitution of another person's work for the student's own or the inclusion of another person's work without adequate acknowledgment (whether done intentionally or not) is known as plagiarism. It is a violation of academic, ethical, and legal standards and can result in a failing grade not only for the paper but also for the course in which the paper is written. In extreme cases, it can justify expulsion from the University. Because of the seriousness of the possible consequences, students who wonder if their papers are within these guidelines should visit the Writing Lab or consult a faculty member who specializes in the teaching of writing or who specializes in the subject discussed in the paper. Useful books to consult on the topic include the current Harbrace College Handbook, the MLA Handbook, and James D. Lester’s Writing Research Papers.

Academic Honesty Details—- from the Honor Code Office:

- Direct Plagiarism: The verbatim copying of an original source without acknowledging the source.
- Paraphrased Plagiarism: The paraphrasing, without acknowledgment, of ideas from another that the reader might mistake for your own.
- Plagiarism Mosaic: The borrowing of words, ideas, or data from an original source and blending this original material with one's own without acknowledging the source.
- Insufficient Acknowledgment: The partial or incomplete attribution of words, ideas, or data from an original source.

Plagiarism may occur with respect to unpublished as well as published material. Acts of copying another student's work and submitting it as one's own individual work without proper attribution is a serious form of plagiarism.

Other Academic Misconduct—from the Honor Code Office

Academic misconduct includes other academically dishonest, deceitful, or inappropriate acts that are intentionally committed. Examples of such acts include but are not limited to:

- Inappropriately providing or receiving information or academic work so as to gain unfair advantage over others.
- Planning with another to commit any act of academic dishonesty.
• Attempting to gain an unfair academic advantage for oneself or another by bribery or by any act of offering, giving, receiving, or soliciting anything of value to another for such purpose.
• Changing or altering grades or other official educational records.
• Obtaining or providing to another an unadministered test or answers to an unadministered test.
• Breaking and entering into a building or office for the purpose of obtaining an unauthorized test.
• Continuing work on an examination or assignment after the allocated time has elapsed.
• Submitting the same work for more than one class without disclosure and approval

V. STATEMENT REGARDING SEX DISCRIMINATION:

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 Employment Office at 422-5895 or 367-5689 (24-hours); or contact the Honor Code Office at 422-2847.

VI. STATEMENT REGARDING DISABILITIES:

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 your instructor early in the semester as well as the Services for Students with Disabilities Office (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 Employment Office at 422-5895, D-282 ASB.

BOOKS FOR PURCHASE

Baum, Lawrence, *The Supreme Court*, 10th ed. (Congressional Quarterly, 2010)

Burns, James MacGregor, *Packing the Court* (Penguin, 2009)


**COURSE OUTLINE:**

V. CONSTITUTIONAL BASES OF JUDICIAL POWER—JUDICIAL REVIEW
(March 14)

**MARBURY v. MADISON, 5 US 137 (1804), pp. 64-72.**
- Judging, chapter 1
- Packing, chapter 2

**Eakin v. Raub, 12 S&R 330 (1825), pp. 84-85.**

**MARTIN v. HUNTER’S LESEE, 14 US 304 (1816), pp. 74-79.**

**EX PARTE MCCARDLE, 74 US 506 (1869), pp. 89-91.**

**Dred Scott v. Sandford, 60 US 393 (1857), pp. 338-344.**
- Packing, chapter 3

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The pages that follow the case are from Epstein/Walker, *Constitutional Law for a Changing America: Institutional powers and Constraints*, 7th ed. (CQ, 2011) 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 HBLL on the 1st level, or in the law school. These numbers are also needed to locate this case on FINDLAW and other web links.
VI. CONSTITUTIONAL BASES OF LEGISLATIVE POWER

.Judging, chapters 15, 30

A. Legislative "Immunity"  (March 16)


B. Legislative "Investigative" Power   (March 16)


C. Apportionment and Representative Government   (March 18)


   Packing, chapter 10

D. Legislative Veto  (March 18)

   IMMIGRATION AND NATURALIZATION SERVICE v. CHADHA, 462

E. Congressional-Presidential relations: Signing Statements   (March 18)

   Epstein/Walker, pp. 206-207.

\(^5\) You must register to get this case using the registration number on the back of the front cover of Epstein and Walker, 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.
MIDTERM EXAMINATION #1: (March 21).

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

NOTE: The first draft of your term paper is due 23 March in class.

.Packing, chapter 7


.YOUNGSTOWN SHEET AND TUBE CO. v. SAWYER, pp 2297-303.


.Packing, chapter 11.


A. President as Chief Executive (March 25)

.Raines v. Byrd, 117 S. Ct. 2312 (1997)—CQ Case Archives, or FindLaw


B. Presidential Elections: (March 28)

BUSH v. GORE, 531 U.S. 98 (2000), pp. 182-190/

C. Impeachment: (March 28)

D. **Presidential Power in Foreign Affairs:** (March 30)


*Goldwater v. Carter*, 444 US 996 (1979)—CQ Case Archives or Findlaw.


E. **Executive War Powers:** (April 1)

*Packing*, chapter 4


*Hirabayashi v. U.S.*, 320 US 81 (1943)—CQ Case Archives or Findlaw.


*Korematsu v. U.S.*, 584 F. Supp. 1406 (N.D. Cal., April 19, 1984)—a district court case [Peter Irons on DVD]

*Packing*, chapter 9

**MIDTERM EXAMINATION #2:** (April 4)

VIII. **CONSTITUTIONAL BASIS OF FEDERALISM**

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

**NOTE:** The *final draft of your research paper* is due today in class.


*Packing*, skim chapter 1


B. Federalism and Commerce: (April 6, 8)
.Packing, chapter 8
.SLAUGHTER HOUSE CASES, 16 Wall 36 (1873), pp. 587-592.

NATIONAL LABOR RELATIONS BOARD v. JONES AND LAUGHLIN

DISTRICT OF COLUMBIA v. HELLER, 554 U.S.570 (2008)—Findlaw

IX. WHAT CAN WE EXPECT OF THE FUTURE OF THE COURT?
(April 11)
.Packing, review Epilogue
.Baum, chapter 6

X. FINAL EXAM ..........Wednesday, 20 April 2011; 7:00-10:00 AM.