Brigham Young University

Political Science 360

The American Federal System (Constitutional Law)

Winter 2013-second block

B. Daynes 346 MARB
Office hour: Tues. 9:30-10:30 MW 3:00-5:30 PM

Course description:

This is a second block class established and set up to accommodate both state legislative interns as well as non-interns. We won't meet in class until Monday, 18 March. As a result we have only ten sessions where we meet together. But in order to give you an equivalent of a full semester class, we will treat the first two weeks of the class when we do not meet, as an independent study course, where you will have an opportunity to do reading and writing on your own handing in the papers during the first week we meet. If I have you turn in our papers by Friday, 22 March—a day we do not meet—I will be able to read them so you can have them back promptly. Given our schedule it is most important that you attend every session we do meet.

Objective #1:

Each of you will first learn about the Supreme Court as an institution-- how it differs from the other federal institutions; how decisions are made and how judges are appointed to the bench..

-You will accomplish this objective through writing of two short five page papers based on readings from the following texts required for the class:

-10% of your grade will be based on a review Lawrence Baum's, *The Supreme Court*, 11th edition (CQ Press, 2013); This will be due on 22 March to the department box.

-10% of your grade will be based on a second paper where you will thoroughly review David O'Brien's, *Judges on Judging: Views from the Bench*, 4th edition (CQ Press, 2013). This will be due on 22 March to the department box.

Each of these papers—which will be double spaced, using a font of "12" in Times New Roman-- should comply with the following
format:

1) The first two pages of each paper should highlight what the author/authors covered in the book; use the subtitle “Introduction.”

2) The next two pages should assess the political consequences of what you have highlighted in the book; use the subtitle “Political consequences.”

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. Use the subtitle: “What I learned.”

4) Source notes that will be an additional item to the text can be either endnotes, footnotes or in-text notes. These should follow the format as indicated in the most recent edition of Kate Turabian’s, *A Manual for Writers of Research Papers, Theses, and Dissertations* (U. of Chicago Press). If you use footnotes, you might need to add an additional paper to the text.

NOTE: Given this assignment it is essential particularly for those of you who will be interning in the State Legislature to purchase these two books early and so that you can read them before class begins.

**Objective #2:**

You will become familiar with a selection of the most important Supreme Court cases that have helped shape the judiciary, the Congress and the presidency

- This objective will be developed in two ways:

1) -You will be assigned an oral presentation on one of the court cases that has helped to shape one of these institutions. This will be worth 20% of your grade.

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 and what their arguments are in the case describing the majority opinion and any concurrences and/or
dissents. You will then explain why this case decision was politically important.

This should take approximately 10 minutes of the class period.¹ (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).

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**

2) Second, you will be asked to write a 12-15 page paper based on another case of your choice, as listed on the syllabus, where you will stress the impact that your case has had on one or more of these institutions. This will be worth 30% of your grade and will be due not later than 3 April.

**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 first and final draft of the paper will be as follows:²

¹ 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 of this.
² This abbreviated listing of guidelines was inspired by a more complete listing first put
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 in-text notes. Make sure there are no roman numerals numbering the endnotes.

3. To write this paper, use outside research material which might include the justices’ 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, 16th 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.

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 complexity.

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

11. Avoid excessive use of lengthy quotations.

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3 Outside material would include sources that we are not using in class
12. Tightly organize your paper, and avoid padding it.

NOTE: For both the oral and written presentations you **MUST READ the original decision** either in U.S. Reports (in HBLL or in the Law Library) or on the web. Complete versions can be found in each of these locations.

**Objective #3:**

We will focus on the political aspects of the Supreme Court which will allow you to appreciate how the Court shares in the political decision making with the other federal institutions in our political system.

As we discuss each case we read, we will stress the importance of the context of these decisions, the background of the cases, the judges who make the decisions, the decision itself, and the consequences of the decision on the political system.

-I will test your comprehension of this through a **midterm** worth (each worth **10% of your grade**) and a **final exam** (worth **20% of your grade**). The midterm will be administered April 3 in class.

The **final exam** will be given on **22 April** from **11:00-2:00 pm**.

**Objective #4:**

Each of you will have the opportunity to read two of the cases in their original form. This you will do when you give your assigned oral presentation and write your paper based on a second case of your choosing.

As for the other cases we discuss, we read excerpts of these cases from the case book and the other assigned books that each of you will purchase.

We will test your comprehension of this through a midterm, and a final exam, as already discussed.

**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.

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


. O’Brien, David M., Judges on Judging, 4th ed. (Congressional Quarterly, 2013). This will be referred to as “Judging” in the syllabus.

COURSE OUTLINE:

V. INTRODUCTION: (March 18)

VI. CONSTITUTIONAL BASES OF JUDICIAL POWER--JUDICIAL REVIEW (March 18)

. Judging, chapters 1-2

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


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

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

4 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 US. REPORTS. US. 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 JUDICIAL POWER--JUDICIAL REVIEW (cont.)

(March 20)

.DRED SCOTT v. SANDFORD, 60 US 393 (1857), pp. 338-344.

VII. CONSTITUTIONAL BASES OF LEGISLATIVE POWER

.Judging, chapter 17

A. Legislative "Immunity" (March 20)


B. Legislative "Investigative" Power (March 20)


C. Apportionment and Representative Government (March 25)


D. Legislative Veto (March 25)


E. Congressional-Presidental relations: Signing Statements (March 25)

Epstein/Walker, pp. 206-207.

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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.
VIII. CONSTITUTIONAL BASES OF EXECUTIVE POWER  (March 27)


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


A. President as Chief Executive  (April 1)

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


B. Presidential Elections:  (April 1)

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

C. Impeachment:  (April 1)


MIDTERM EXAMINATION:  (April 3)
D. Presidential Power in Foreign Affairs: (April 8)


E. Executive War Powers: (April 8)


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


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

. Packing, chapter 9

IX. CONSTITUTIONAL BASIS OF FEDERALISM

A. Nation-State Relations: (April 10)

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


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

  - *SLAUGHTER HOUSE CASES*, 16 Wall36 (1873), pp. 587-592.

B. **Federalism and Commerce:** (cont.) (April 15)


X. **WHAT CAN WE EXPECT OF THE FUTURE OF THE COURT?**
   (April 15)

  - Baum, chapter 6

XI. **FINAL EXAM ............ Tuesday, 22 April, 11:00-2:00 PM**