

**AMERICAN CONSTITUTIONAL
DEVELOPMENT I
STRUCTURES AND PROCESSES
DR. ALAN SAGER**

HOME COURSE INFO ASSIGNMENTS RESOURCES VIDEO

SYLLABUS SPRING 2023

Syllabus Spring 2023

Required Books:

1. Lee Epstein and Thomas G. Walker, **Constitutional Law For A Changing America: Institutional Powers and Constraints**, Congressional Quarterly 2022 11 Edition
2. Burton Folsom, **New Deal, Raw Deal**
3. Larry Arnn **The Founder's Key**

Videos:

There will be a series of assigned videos to view on Youtube. I have collected a large number of relevant videos and they appear on the video page of this website. Not all the videos on this page are assigned. Many are there so interested students can explore either the cases or the context around the cases in more depth.

Biographies:

There are brief biographies of the Justices in Epstein and Walker. You should know something about each Chief Justice from Marshall to Roberts and another 12-16 or so Associate Justices who will be identified as the course goes on.

Briefing Cases:

You should write a brief for each case covered in this course. These will help you learn a useful skill, keep up with the class discussion, get a passing grade on class participation and allow you to easily prepare for the exams.

For the briefing form for this course, [click here](#).

Note: each class I teach has a slightly different briefing form!!

For sample briefs read: The Antelope ([click here](#)) Cherokee Nation v. Georgia ([click here](#))

These cases have a section called arguments. You should try to create this section for your brief. However, this section will not be part of the briefing assignment. I will expect you to know these cases from their briefs when mentioned starting in about class 5.

There are a number of student briefs linked to cases assigned at the end of this course. These were handed in for the class brief writing assignment. **As a result, they are more extensive than you might need for your daily briefs.**

Note: Stay up with the assignments even if the class discussion falls behind. The exams will cover everything up to the date of the exam whether we have covered it in class or not.

[\(Edit\)](#)

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SYLLABUS SPRING 2023

Assignments

Edit Page

Add title

Constitutional Development I Spring 2023

First a caveat: the order and content of each assignment may change throughout the semester. Content changes are most likely as we get toward the end of the semester. The Supreme Court may issue an opinion in some area we are studying. For instance, that opinion may overrule an assigned opinion or provide more clarity on the issues than the previous opinion. At least 2 weeks notice will be given for changes in order of assignments.

Cases and readings are denominated in 3 ways. First, those for which you should have a written brief are marked 'brief' next to case. Second, those that you should read and just know issue and holding are not marked. Third, those Dr. Sager will discuss are marked "Dr. Sager will discuss".

In addition, cases in the online supplement and not in the text book are so marked. From time to time you may be asked to turn in some questions about the cases to be briefed for a particular day.

Your briefs should be on a written or printed page not on your computer. Recitation from your phone, ipad, computer etc will not be considered as being prepared. Recitation from memory will be fine. Assigned cases that are in the book are not otherwise noted on the schedule. Assigned cases on the publisher's website for the Epstein and Walker are noted as being in the supplement. A few cases or topics can be reached by clicking the links in the schedule.

Most assigned cases have relatively simple fact situations, e.g. Congress or a state passed a law about this or that and someone claims it violates the constitution or some administrator did this or that and someone claims they had no power to do that.

Lastly, Dr. Sager will discuss some cases as noted. You should know the facts of these cases when you come to class that day. Knowing the facts means you can state in a couple of sentence who did what to whom and why the case got to court. Asterisked cases are in the supplement. Other cases he will cover are neither in the main text nor on the website containing supplemental cases. You can find the facts on the web. Previous student briefs for some of the later cases assigned are so noted on the website and you are welcome to use these. There are also assigned videos usually with a number associated with them. The videos are numbered on the [video page](#). Not all of those videos are assigned. Some are there to provide additional context to the assigne

Again, check this page regularly for changes.

For sample briefs and a description of how to brief a case, go to the Syllabus page of the class website.

Class #1 Monday January 9th

Introduction: Over the first two weeks read Epstein and Walker 1-63 (This is introductory material. Some of you may already know much of this from high school and/or basic government classes or other government classes. Read the Declaration of Independence and begin reading the Constitution. Both are available in the Arnn book. Watch video 6 a good

Email: amsag@mail.utexas.edu

:laration of Independence.

SYLLABUS SPRING 2023

VIDEO

RESOURCES

ASSIGNMENTS

COURSE INFO

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FROM THE MEDIA

The Pre-Marshall and Marshall Courts 1787-1835

Property Rights and Transcendent Rights

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[Back to top ↑](#)

1. Calder v. Bull(brief) ([click here for case](#)) Note: The Findlaw formatting for this case may have Justice Iredell's name tucked in at the end of Justice Paterson's opinion not heading his separate opinion (looks like this: "technical, which is also their common and general, acception, and are not to be understood in their literal sense. [3 U.S. 386, 398] " Iredell, Justice.

Though I concur in the general result of the opinions, which have been delivered, I cannot entirely adopt the reasons that are assigned upon the occasion."

Note: This is a pre-Marshall case, Each of the 4 Justices who heard the case wrote an opinion. This was called **seriatim opinions**. This was the way the highest court in England delivered its opinions. Supreme Court followed this procedure at its inception. It was not required by the Constitution or any federal law. Marshall started the custom of a single justice writing a majority opinion and attempting to get unanimous support. Those who disagreed could write a concurrence or dissent.

For some notes, on reading this case [click here](#). Quotes about the Constitution which will be cited in Class 1 ([click here](#))

2. Begin reading Arnn book, The Founder's Key There may be references to it in this first class. We will include it more formally in our discussion by the 2nd class. The author has an interesting point of view and argument about the relationship between the Declaration of Independence and the Constitution. The first 20 pages or so of the book layout his basic argument. While Justices don't directly write about that relationship, as we go through the semester, you will see a number of opinions that that don't necessarily agree with this point of view or fundamentally disagree with it. As we go th

3. Read a brief summary of two fundamental notions of how to interpret the Constitution and what it might mean during the current Supreme Court term, by John Yoo a conservative writer, Berkeley law professor and former Bush Justice Department official. ([click here](#)). One writer calls this **Originalism and Interpretivism. (He is also on list to cancelled by those who disagree with him.)** These are just one set of many distinctions we will cover during this semester. A major way we learn is by creating distinctions. We will see many varieties of each of this two approaches. Be clear about this dichotomy from the start and be able to state it in your own words. We will also look at the distinctions called **activism/restraint** which can also be denominated as **uphold holding a state policy versus striking down a state policy**. A simple version of these is that activism is overruling the law, statute, act etc. of a legislative or administrative body versus restraint which is upholding these same actions. Always try to figure out the uphold vs strikedown side. This is a very important way to relate cases to each other over time.

At times there are two state parties in the Court and and one is one each side. We will be using these terms to compare the

the ebb and flow of Supreme Court opinions. **These terms are separate from conservative versus liberal judges and opinions. There are conservative activists and liberal restraintists as well as conservative restraintists and liberal activists.**

4. Madison quote from Federalist 51:

"If Men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and the next place, oblige it to control itself."

What does this have to do with what we are doing in this course.

Class #2 Wednesday January 11

The Taxing Power

2. Hylton v. U.S.(brief)(supplement)(Findlaw)

Issue in this case relates to what is a **direct versus and indirect tax, proportionate versus uniform taxes** and what taxing power is given to Congress under the Constitution as of 1787? If you don't have supplement

yet [click here](#) for full text about 10 pages. Make sure you understand distinction between a direct and an indirect tax.

2a. Chisholm v. Georgia(Brief)(supplement)

(Note this case came even earlier than Calder and really was not a Marshall Court case. It is a pre-Marshall Court case so it has what are called seriatim opinions) Per our class discussion of Justice Cushings opinion: here is the text I have found for the case. It looks like there is a Court Reporters error or someone else's error([click here](#))

Judicial Review

3. Marbury v. Madison (brief)([click here](#) for Section 13 of the Judiciary Act which Marshall held unconstitutional)

View Video: Marbury v. Madison.

For Joel Grossman's excellent analysis on the 200th Anniversary of Marbury([click here](#)) Note Grossman's question at the end written in 2004 and may be answered in several ways by the end of this course. Also you should know his main points about why Marbury is still important.

How many different arguments can you find in Marshal's opinion in favor of judicial review by the Supreme Court. You should get at least 4 of the 6. Try to reduce the arguments to as few words as possible.

How would you characterize the source or nature of Justice Marshall's arguments originalist, textualist, current policy needs or living constitution, or something other than these .

3a. **Eakin v. Raub** Dr. Sager will discuss the dissenting opinion which is an argument about judicial review

Read Federalist No. 78 in Epstein and Walker Appendix. How many different arguments for judicial review of legislative acts can you find in Federalist 78? If you do not have access to the Appendix because you bought a used book here is a link to Fed 78 on the web([click here](#)). While searching for a link to a full copy of Fed 78, I just found this summary of Fed 78 on a Tea Party website along with summaries of all of the Federalist Papers([click here](#))

Surprisingly, the website does not contain summaries of the Anti-Federalist Papers. Looks like there are other summaries available. (Might be interesting to compare them; perhaps a worthwhile project for a paper in a government course. Might take 2 or 3 major Federalist Papers, say 10 and 78 and see how accurate all the summaries are compared to your reading of them. Then see if there is an ideological content to the summaries.)

Videos 4, 5, and 6a.

Van Geel Chart Multicolors ([click here](#))

Van Geel Chart Black and White([click here](#))

Class 3 Wednesday January 16th

Early Challenges To Judicial Supremacy

4. **Impeachment Trial of Justice Samuel Chase** (Dr. Sager to discuss in class)

If you want to delve into the life of James Callender, the scandalmonger, who libeled and defamed both Adams and then Jefferson, William Safire wrote an historical novel entitled Scandalmonger. There is an interview with Safire on C-Span that covers the book. Safire is interviewed by "The Book Guys." They know this historical period well. [Click here](#) Part of the charges stemmed from Chase's behavior in the Callender case.

Make sure you know the section of the Constitution on impeachment and treason.

5. **U.S. v. Aaron Burr** You Tube video in 2 parts 30 minutes each

To prepare this case see the description of Burr's Alleged Treasonous Activities and the story of the case ([click here](#))

For Marshall's opinion([click here](#)) Just skim it to get a sense of what he is saying.

Linder summary which is linked above will be sufficient. You should come to class with brief for this case just like any other case in the textbook. The Burr video will help you

understand the case in detail.

Carefully watch the Burr video before class: U.S. v. Aaron Burr

(Youtube video in 2 parts on video page) #14 on the video page or search Youtube and you will find this. Note: THIS VIDEO in total is 1 hour 20 minutes long total for both parts. There is part of the video missing about 30% into part II. There is a discussion with another Justice they discuss how to distinguish the definition of treason in the Bollman and Swarthout case from the Burr case. It appears Marshall used the English version in that case. One says well the Bollman and Swarthout not on trial for treason. The sued for and got a *writ of habeas corpus* to get out of prison. Rule in Burr case does not affect ultimate judgment in that case. Definition of treason in that case what is called obiter dicta, not essential to the ruling. This is raised again later in the video as well.

Can anything in the Burr case be related to some of the political issues we have seen over the past 4 years specifically? If so what and how?

Congressional Powers and the States

7. McCulloch v. Maryland (brief) (Note: There are two issues in this case and they are covered in different parts of the book. We will cover both issues: creating a bank and state taxing powers). Can you relate this case to the essence of the story of Ben Franklin telling Thomas Jefferson about the Hatter's sign?

For a critique of Marshall's view ([click here](#))

View video: McCulloch v. Maryland which can be found on Youtube. The link is on the video page.

A number of Marshall quotes in McCulloch are among his most famous. Can you pick them out?

The Contracts Clause I

8. Fletcher v. Peck (Brief)

9. Dartmouth College v. Woodward (Brief)

Watch whatever you can especially the ESPN parody of Burr Hamilton Duel) Videos 18, 19, 20, 21, 33

Class #4 Monday January 23

The Commerce Power and National Economy

10. Gibbons v. Ogden (Brief)

View video: Gibbons v. Ogden

Using the Van geel chart compare McCullough as the precedent case and Gibbons as the main case. Which box?

Questions: **Restate Marshall's definition of the following terms: commerce, among the several states, regulate.**

What is the source of these definitions?

What is difference between Justice Johnson's view and C.J. Marshall's?

Based on Marshall's view of the commerce clause, what are the limits?

What role do states have in commerce based on Marshall's views?

View Clip #30 on [video page](#), Justice Roberts on Justice Duval who appears in several of these early cases

videos. Roberts calls him the most insignificant Justice ever. Might look at comments on video as well

Watch Folsom video about Robber Barons on video page. Also see Milton Friedman videos #36 and #37 Here To relate Gibbons to the steamship story in the video ([click here](#)).

Federal Judicial Power and the States

12. Martin v. Hunter's Lessee (Brief)

(Take Marbury as precedent for Martin's. Attempt to figure out which box in the Van geel chart you would be in with Marbury as the precedent case and

Martin as the main case. Did Martin narrow or broaden Marbury. What aspect of the Marbury case did Martin apply to? What do we remember most about the impact of

Chisholm?)

13. Cohens v. Virginia(A summary appears in the text after Martin case. Read opinion in supplement to get some of the fine Marshall quotes)Dr, Sager to discuss(Query:

what does Cohen case add to Martin? Attempt to figure out which box in the Van geel chart you would be in with Martin as the precedent case and Cohens as the main case. Did Martin narrow or broaden Cohens. To what aspect of the Martin case did Cohens apply to?)

[Click Here for Chisholm, Martin and Cohens cases in word form](#)

Federal Judicial Power and the States Taxation

14. Brown v. Maryland (supplement)([here is a sample brief for this case](#)) Dr. Sager to discuss

Note: This brief is not as extensive as the one you will be doing with your assigned Supreme Court case

The Bill of Rights and the States

15. Barron v. Baltimore(Brief)(supplement)([click here for another edited version](#))

Paper #1 This will be discussed in class. It is a brief of a Supreme Court case. Note in the past some students have mistakenly done the lower court opinion. All cases assigned were decided by the U.S. Supreme Court The brief is due Thursday February 11th. A list of case assignments by last name will be posted before class on February 2nd. For the briefing form to use for this brief ([Click here](#)) Find your case through Findlaw or other online databases of Supreme Court cases and bring any questions about it to class on Wednesday. You are expected to do the case you are assigned so be sure you know how to find it. For your case and the points given for each part of the brief **Two copies of paper which should be no longer than**

3 pages, about 750-900 words will be due at beginning of Class 7

[Click Here for Chisholm, Martin and Cohens cases in word form](#)

Class #5 Wednesday January 25th

B. Taney Court 1836-1864

The Commerce Clause and the National Economy

16. Mayor of City of New York v. Miln(Brief)(supplement)([click here for another edited version](#))

The Contracts Clause and the National Economy

17. Charles River Bridge v. Warren Bridge(Brief)

For a discussion related to Gibbons about competition between Vanderbilt and his crony capitalist competitors see the following lecture by Burt Folsom It also explains how crony capitalism worked in this case based on his research using the Congressional records from the 1800's. ([click here](#))

Congressional Preemption –Federal Judicial Power and the States

18. Prigg v. Pennsylvania Dr. Sager to discuss([click here for excellent edited version of case](#)) The following is a brief for this case. ([read sample brief](#)) Dr. Sager will discuss this case which is not in your text.

Federal Jurisdiction: Political Questions

19. Luther v. BordenDr. Sager to discuss(supplement)[click here for another edited version](#))For a discussion of Luther based on upholding or striking down a government policy ([click here](#))

The Commerce Clause and the National Economy

20. Cooley v. Board of Wardens(Brief)

Federal Jurisdiction, Congressional Power and Slavery

21. Dred Scott v. Sanford(Brief)

Videos 7, 8, 23, 24 25 These will help you more fully understand the case. A couple are reenactments of parts of the Lincoln Douglas debates.

Be sure you have completed Arnn book through Chapter 6 which is about the

Founders and Slavery. For exam you will need to have read Chapters 1-6 and the last chapter entitled "Conclusion."

Class #6 Monday January 30th

Executive Power: The War Power

22. The Prize Cases(Brief)

C. Chase Court 1864-1873

Executive Power During War

23. Ex Parte Milligan(Brief)

Federal Jurisdiction: Congressional Limitations

24. Ex Parte McCardle(Brief)

Federal Jurisdiction and State's Rights

25. **Texas v. White(Not in book or supplement. Dr. Sager will discuss.)**

26. Mississippi v. Johnson(Brief)

Paper #1 Due Today In Class Please bring 2 copies. Put your name on last page and your row and seat number in the upper right hand

State and Federal Income Taxation

27. **Collector v. Day Dr. Sager to discuss(supplement)**

28. **Springer v. U.S.Dr. Sager to discuss (supplement)**

Class #7 Wednesday February Feb 1st

The Bill of Rights and the States

29. **The Slaughterhouse Cases(Brief)**

Read carefully the following articles. Are you, or will you be or become, part of the narrative? Compare to Dr. Arnn's views on the

Declaration as it relates to the Constitution. This article suggests one reason I organize this course historically as well as what a larger purpose might be for being in this course.

Read Professor Arnn's discussion slavery. " 1776 truth vs 1619 falsehoods" ([click here](#))

and evaluate along with the Balkin article below.

Yale Law Professor Jack Balkin's "The Declaration and the Promise of a Democratic Culture" ([click here](#))

Summary of Chase Court(Dr. Sager)

D. The Waite Court 1874-1888

State Police Powers, Due Process and Property Rights

30. **Munn v. Illinois(Brief)**

How, if in any way, does this opinion relate to the Miller, Field and Bradley opinions in the *Slaughterhouse Cases*?

What are the grounds of agreement and disagreement with each opinion.

The Contracts Clause

31. **Stone v. Mississippi(Brief)**

What is the status of the contracts clause after this case?

The Commerce Power, State Action and Individual Rights

32. **The Civil Rights Cases(Dr. Sager to discuss in class. Not in book or supplement)**

State Police Power, Property Rights and Due Process

33. **Santa Clara County v. Southern Pacific Railroad(Dr. Sager to discuss in class.**

Not in book or supplement)

D. The Fuller Court 1888-1910

State Police Powers, Property Rights and Due Process

34. **Chicago and Milwaukee RR. v. MinnesotaDr. Sager to discuss(supplement)**

How does this case add to or subtract from the Munn case. Be sure to read the text book notes before and after Munn.

New book assignment: Begin reading Burton Folsom, *New Deal, Raw Deal*. Available on Amazon for less than \$9.00. It should be finished right after Spring Break. It will provide some good background and context to the many of the cases we will cover in the Taft, Hughes and Stone Courts, especially Classes 16 and 17.

Class 8 Monday February 6th

The Commerce Power, Taxing Power and the National Economy

35. **U.S. v. E.C.Knight**(brief)

36 **Champions v. Ames** (Brief) Same questions as above

37 **McCray v. United States** (brief)What does this case along with Ames change about one of the fundamentals of the Constitution

The Taxing Power

38. **Pollock v. Home Savings and Loan** (Dr. Sager to discuss)

Federal Police Powers, Due Process and Property Rights

39. **Adair v. U.S.** (Dr. Sager to discuss)

Class #9 Wednesday February 8th

Exam 1

Class 10 Monday February 13th

40. **Lochner v. New York**(Brief)([Click here for votes](#)) (Votes at bottom of chart are totaled as uphold vs. strikedown. Vote on side are votes of Justice who was on the Court when Ellis was decided. Year is year that original Justice left the Court)Be sure you review chart carefully before coming to class.

How does this case relate to Adair, discussed by Dr. Sager and E.C. Knight.

What are the famous quotes in the Holmes dissent?

State Police Powers, Due Process and Property Rights

41 **Muller v Oregon**

F.The White Court 1910-21

The Commerce Clause, Due Process and Property Rights

42. **Hammer v. Dagenhart**(Brief)

The Commerce Clause

43. **Shreveport Rate Cases Houston East & West Texas Railway Co. v. U.S.**(Brief)

(supplement)(also discussed in text) What is the criteria for determining if something

is part of interstate commerce and how does this relate to Gibbons and previous commerce clause cases? Now go over actual case. <https://caselaw.findlaw.com/us-supreme-court/234/342.html>

44. **Missouri v. Holland**(brief)

What are the important quotes by Justice Holmes.

Class 11 Wednesday February 15th

G.The Taft Court 1921-30

Taxing Power

45. **Bailey v. Drexel Furniture**(Brief)

Federal Judicial Power: Standing

46. **Frothingham v. Melon**(Brief)(supplement) Dr. Sager to discss

State Police Powers, Due Process and Property Rights

47. **Adkins v. Children's Hospital**(Brief)

48. **Pierce v. Society of Sisters** and 48a. **Meyer v. Nebraska** [Click here](#) for Pierce,

[Click here for Meyer](#)

(Dr. Sager to discuss)

Congressional Powers: Investigations

49. **McGrain v. Daugherty**(Brief)

Executive Power:Removal

50. **Myers v. U.S.**(Brief)

Class 12 Monday February 20th

The Takings Clause

51. **Euclid v. Ambler Realty** (Dr. Sager to discuss. Not in book or supplement)

Sutherland "pull quote"

"Regulations, the wisdom, necessity, and validity

of which as applied to existing conditions are now uniformly sustained, a century ago, or even half a century ago probably would have been rejected as arbitrary and oppressive.”

“and in this there is no inconsistency, for, while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operations. In a changing world it is impossible that it should be otherwise.”

Here are some quotes by Chief Justice Hughes in *Blaisdell* (which is below, Case No. 52) and Justice Sutherland dissenting in *Blaisdell* and another case we will get to after Spring Break, *West Coast Hotel v. Parrish*. For class today read and carefully compare and contrast the two justices approach to understanding the Constitution and to constitutional interpretation. Which do you agree with and why? Now argue the other side. ([Click Here](#))

52. *Pennsylvania Coal Company v. Mahon*(Brief)(supplement)(Dr. Sager to discuss)

H. The Hughes Court 1930-1941

The Contracts Clause

53. *Home Building and Loan Assoc. v Blaisdell*

Executive Powers: Removal

54. *Humphrey's Executor v. U.S.*(Brief)

(will begin referencing Folsom book in class today)

What is the relationship, if any, between the some or all of the book contents and what we are covering in class?

Conceptualize this as broadly as you can.

The Commerce Power, The National Economy and

55. *Schechter Poultry v. U.S*(Brief)

The Taxing Power

56. *U.S. v. Butler*(Brief)

Class 13 Wednesday February 22nd

H. The Hughes Court 1930-1941

The Contracts Clause

53. *Home Building and Loan Assoc. v Blaisdell*

Executive Powers: Removal

54. *Humphrey's Executor v. U.S.*(Brief)

(will begin referencing Folsom book in class today)

What is the relationship, if any, between the some or all of the book contents and what we are covering in class?

Conceptualize this as broadly as you can.

The Commerce Power, The National Economy and

55. *Schechter Poultry v. U.S*(Brief)

The Taxing Power

56. *U.S. v. Butler*(Brief)

State Police Powers, Due Process and Property Rights

57. *Nebbia v. New York*(Brief)

58. *West Coast Hotel v. Parrish*(Brief)

Class 14 Monday February 27th

The Commerce Power and the National Economy

59. *NLRB v. Jones and Laughlin Steel*(Brief)

The Taxing and Spending Power

60. *Steward Sewing Machine v. Davis*(Brief)

Videos 1, 1a, 2, 2a and 2b (these will be on 2nd exam)

Executive Powers: Treaty and War Power

61. *U.S. v. Curtis Wright*(Brief)

Judicial Review, Due Process, Congressional Power and the National Economy

62. Ex Parte Grossman (brief) I have added this because of its contemporary relevance. See if you can uncover what current situations, if any, it might apply to today. Also for it to apply a couple of things which are strong possibilities would have to happen. The current situation involves different facts-Grossman was about selling alcohol-but could be the same general legal situation down the road.

I. The Stone Court 1941-1946**The Commerce Power and the National Economy**

63. U.S. v. Darby Lumber(Brief)

64. Wickard v. Filburn(Brief)

Class 15 Wednesday March 1

64a United States v. Carolene Products NIB Dr. Sager to briefly discuss

Chief Justice Stone's famous footnote 4 in **Carolene Products**:

"There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments....It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment...Nor need we enquire ...whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

65. Ex Parte Quirin(Brief)

66. Korematsu v. U.S.(Brief)

View #13 on Video page which is several short videos about the Korematsu case and Pearl Harbor. Most important is last one

with Michelle Malkin defending her position on the need for the internment on what was a show entitled Hannity and Colmes(conservative vs liberal) back in early 2000's. Her position has received enormous scholarly criticism.

The Commerce Power and the States: The Dormant Commerce Clause

67. Southern Pacific v. Arizona(Brief)

In case you have time for lighter reading, here is a set of letters about my and my teaching that appeared in the Daily Texas in 2001 with a minor post script from me about 8 or more years later. ([click here](#))

Class 16 Monday March 6th**J. The Vinson Court 1946-1953****Takings**

68. U.S. v. Causby(Brief)

Executive Powers The War Power

69. Youngstown Sheet and Tube v. Sawyer(Brief)

Carefully read at least twice the Jackson concurrence in this case. It is considered much more important than

Black's majority opinion. In addition, you might find it applicable to many current issues and perhaps if followed determinative of some ongoing or potential Supreme Court cases.

Go over the Principles of Constitutional Construction ([click here](#))

See how these principles fit into the model Dr. Sager constructed in class.

K. The Warren Court**Takings: Public Use**

70. Berman v. Parker(Brief)

Congressional Preemption

71. Pennsylvania v. Nelson (Dr. Sager to discuss)

Congressional Powers; Investigation

72. Watkins v. U.S.(Brief)

73. Barenblatt v. U.S. (Brief)

In case you have time for lighter reading, here is a set of letters about me and my teaching that appeared in the Daily Texas in 2001 with a minor post script from me about 8 or more years later. ([click here](#))

74. Cooper v. Aaron (Dr. Sager to discuss. Not in book or supplement)

Paper #2 Assignment

The assignment is to read 3 Supreme Court briefs that were filed in your case. Read both party's original briefs, stated as petitioner/respondent or appellant/appellee. Then read a brief for one of the numerous Amicus Curiae. You choose which amicus brief you read. Write a 3-4 page analysis, 1000 words max, comparing and contrasting the major arguments in the briefs with the arguments used by the majority in the Supreme Court in case you briefed for the 1st paper. You can find the complete set of briefs on Scotus Blog or The American Bar Association website or Lexis/Nexis. U.T. has a subscription to Lexis/Nexis. Cases are usually ordered by Term of the Court and then by when the case was argued within that Term.

Best way to search: put name of your case then Scotus Blog in search bar.

Make sure you can find briefs for your case before you come to class on March 23rd

Better yet you can do the whole paper over Spring Break

Be sure you have looked at the list of briefs for your case so can ask any questions that may come up.

Paper will be due around April 20th

Class 17 Wednesday March 8th

In case you have time for lighter reading, here is a set of letters about my and my teaching that appeared in the Daily Texas in 2001 with a minor post script from me about 8 or more years later. ([click here](#))

Federal Jurisdiction: Political Questions and Standing

75. Baker v. Carr (Brief)

76. Flast v. Cohen (Brief)

The Commerce Power and the National Economy

77. Heart of Atlanta Motel v. U.S. (Brief) (Dr. Sager to discuss)

Modern Substantive Due Process

78. Williams v. Lee Optical (Dr. Sager to discuss)

Congressional Power: Taxation

79. U.S. v. Kahringer (Brief) (Supplement)

Congressional Power: Privileges

80. Powell v. McCormack (Brief)

L. The Burger Court 1969-1986

Executive Powers: The War Power

81. New York Times v. U.S. (Dr. Sager to discuss. Not in book or supplement)

82. U.S. v. U.S. District Court (Dr. Sager to discuss. Not in book or supplement)

Class 18 Monday March 20th

Takings

83. Hawaii Housing Authority v. Midkiff (Brief)

The Commerce Power

84. Hunt v. Washington State Apple Advertising (Brief)

In case you have time for lighter reading, here is a set of letters about my and my teaching that appeared in the Daily Texas in 2001 with a minor post script from me about 8 or more years later. ([click here](#))

85. Gravel v. U.S. (Brief)

Judicial Review and Executive Powers: Executive Privilege

86. U.S. v. Nixon (Brief)

Congressional Powers: Delegation and Legislative Veto

87. I.N.S. v. Chadha(Brief)

Congressional Powers: Delegation

88. Bowsher v. Synar(Dr. Sager to discuss)*

The Contracts Clause

89. Allied Structural Steel v. Spannus(Brief)Dr. Sager to discuss

Class 19 Wednesday March 22nd

Exam 2

Class 20 Monday March 27th

The Takings Clause

90. Penn Central Transportation Co. v. City of N.Y.(Brief)

91. Keystone Bituminous Coal v. Benedectin(Brief)(supplement)

Separation of Powers

92. Morrison v. Olson(Brief)

Now compare Bowsher, Chadha and Morrison. What are similarities and differences.

Also as best you can compare the voting behavior of justices who decided all 3 cases.

If you knew only how they voted in these cases and the similarities and differences in these cases how might they vote in the following case: Read the facts only in *Mistretta v. U.S.*

Can you make a prediction about the newly appointed Justice Scalia based on what you think

his views were before he was appointed to the Court?

Federal State Relations

93. Pacific Gas and Electric v. State Energy Commission(Dr. Sager to discuss)

Executive Powers: War Power and Treaties

94. Dames and Moore v. Regan(Brief)

The Supreme Court and State Constitutions

95. Michigan v. Long(Dr. Sager to cover in class)

Class 21 Wednesday March 29th

The Supreme Court and State Constitutions

95. Michigan v. Long(Dr. Sager to cover in class)

The Commerce Power and the National Economy. The Tide Turns?

96. National League of Cities v. Usery(Dr. Sager to discuss)

M. Rehnquist Court 1986-2005

The Commerce Clause, 10th Amendment and the National Economy,.The Tide Turns Again?

98. U.S. v. Lopez(Brief)

99. Printz v. U.S.(Brief)

Class 22 Monday April 3rd

The Commerce Clause, 10th Amendment and the National Economy,.The Tide Turns Again?

98. U.S. v. Lopez(Brief)

99. Printz v. U.S.(Brief)

100. U.S. v. Morrison(Brief)

101. Granhold v. Heald(Brief)

The Taxing and Spending Power

102. South Dakota v. Dole(Brief)

State Powers and Federalism

103 Alden v. Maine(brief)

Class 23 Wednesday April 5th

104. Gonzales v. Reich (brief)

105. Oregon Waste Systems v. Department of Environmental Quality of State of Oregon(brief)

State Powers and Federalism

106 U.S. Term Limits v Thorton (Dr. Sager to discuss)

107. Virginia Community College v. Katz(Dr. Sager to discuss)

108. Lucas v. South Carolina Coastal Authority(Brief)

109. Kelo v. City of New London(Brief)

Some notes on Chief Justices

Charles Evan Hughes

Harlan Stone

Fed Vinson

Earl Warren

Class 24 Monday April 10th

Executive Powers: Immunity

111. Clinton v. Jones(Brief)

Judicial Power

112. Hein v. Freedom from Religion Foundation(Dr. sager to discuss)

Executive Power

113. Hamdi v. Rumsfeld (brief)

115. Bond v. United States (Dr. Sage to discuss)

M Roberts Court 2007-??

Mainly new take on old issues

Federal Taxing Power and Commerce Power

116 NFIB v. Sibelius

Executive Power

117 Clapper v Amnesty International(Dr. Sager to discuss)

Class 25 Wednesday April 12th**Takings**

119. Kelo v. City of New London (brief)

120.Horn v. Department of of Agriculture(brief)

Commerce Powers

121 Gonzales v. Reich(brief)

States Taxation

120 South Dakota v. Wayfare(brief)

Legislative Power

121. Gundy v. United States(brief)

Nation Preemption

123 Arizona v. United States(brief)

123.Murphy v NCAA(brief)

Class 26 Monday April 17th**Most Recent Roberts Court cases**

Judicial Power

124. Patcha v Zinke(brief)

Federal Powers

125. Sween v. Melin(brief)

Executive Power

126.Trump v Vance(brief)

Legislative Power

127. Trump v. Mazar(brief)

Class 27 Wednesday April 19th**Exam #3**

Class 27 Wednesday april 19th**3rd Hour Exam**

There will be 3 parts: 1) Take home essay 2) Objective in class 3) In class essay or two
Last year the objective had many questions and it all fit on just 2 pages, rather than the usual 4 pages.

1. **Cases Covered: All cases assigned since last exam starting with # 79 Kahringer v United States through #124 Trump v. Hawaii. Also case Virginia Community College v. Katz will not be on exam. (Note the latter cases were recently renumbered) Plus the exam will not cover following cases on objective: NYT v United States, U.S. v U.S. District Court, Michigan v. Long, (I may add to this list after Tuesday's class) Some of these might be usable on essays but not necessarily**
2. **Chief Justices: from Stone to Roberts**
3. **The formalist, functionalist voting chart**
5. **There are no supplementary book assignments for this exam. Also there are no videos for this exam.**
6. **Lastly, for some comparison questions it may be expected you recall some of the major cases from each era for example, Calder, Gibbons, Korematsu, Marbury, McCullough, Prigg, Dred Scott, Milligan, Munn, Lochner, NLRB v Jones and Laughlin, Wickard, Youngstown. This is a not an exhaustive list. We have mentioned a good number of past cases that relate to current one in the last couple of classes.**
7. **You may use the case you briefed and used for paper #2 if that fits into your answer on any of the essays or the take home.**

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**AMERICAN CONSTITUTIONAL
DEVELOPMENT I
STRUCTURES AND PROCESSES
DR. ALAN SAGER**

HOME COURSE INFO ASSIGNMENTS RESOURCES VIDEO

SYLLABUS SPRING 2023

Home

Welcome to Dr. Alan Sager's Spring 2023 course.

GOV320K Mon-Wed 2:30-400 Wagner 214

(Website: <http://sites.la.utexas.edu/amcondev1/>)

[Course Overview](#) | [Course Goals](#) | [Requirements](#) | [Grading](#) | [Office Hours](#) | [Suggestions](#)

About Dr. Sager

I look forward to teaching and working with you this semester in this live course. . In case you do not know me, I have a law degree and a Ph.d. in Political Science. I have done many things in my life including practicing law, teaching, being in the political polling and consulting business, working on the staff of Chief Justice Warren Burger among other things. I have taught part time at U.T. for more than 25 years. I also taught full-time back in the late 60's and early 70's before I went to the Supreme Court and then the Federal Judicial Center.

I continue teaching because I love doing it and I love the law, The Constitution, judicial process and politics. Finally, I have been involved in the judicial and legal process as a lawyer, administrator, scholar, politician and even a party during a 20 year long law suit involving my business.

Overview

This course focuses on the development of American Constitutional law in the areas of structures, e.g. federalism, and processes, e.g. how cases get to the Supreme Court. Most of the assignments involve reading and analyzing judicial opinions in actual cases. These opinions not only reveal what various justices, scholars and leaders think the Constitution says about the issues at hand, they also reveal how, and perhaps why, justices think and reason as they do. In reading and studying these opinions, we will also pay close attention to the theories and methods of interpretation embedded, often to the point of being purposely hidden, in all of these opinions.

In part due to the growth of Youtube, there are a large number of real and recreated historical videos related to actual cases. Many are assigned for students viewing. These can be found on the [videopage](#) which is also linked on the [schedule](#) page.

This course is designed for students who want to know more about role of the Constitution in structuring American political life, students who are planning to attend or think they want to attend law school, and future teachers of government and political science at any level of our educational system. It is also for students who want to expand their skills in reading and interpreting political texts.

Course Goals (promises)

There are four major goals for this course:

1. *To identify the major historical themes and controversies about our Constitution*
2. *To better understand Constitutionalism and our Constitution; what our Constitution is and is not and how it has changed and developed over the past 200 years.*
3. *To have students develop a high level of skill in reading, briefing and understanding*

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with special attention on what questions to ask when reading an opinion. Part of this skill includes being able to see and understand the point of view of the person writing an opinion.

4. To raise participants' "cultural literacy" about the Supreme Court including important Justices and major cases, our Constitution and the historical, social, and cultural context in which the Court and Constitution exist.

To fulfill these goals, some of the questions we will attempt to answer as we work through major Supreme Court cases in historical order include:

1. What is a Constitution supposed to do and who is supposed to interpret it?
2. From where did our Constitution come and does that even matter today?
3. What differences, if any, have existed among the justices as to what the Constitution means?
4. How do various justices go about interpreting the Constitution? What accounts for their differences? In other words, what are the various theories of constitutional interpretation?
5. What impact does the Court and Constitution have on American society?

We will also be constantly searching for the unspoken or assumed premises of the justices and even ourselves as we study these materials.

Bringing such premises to light will sharpen and enhance your analytical skills and ability to create distinctions. Being able to see and create distinctions is the building block of learning and most efficient way to expand what understanding of the world around you.

What is required of students in the course:

- A. Keep up with reading and briefing for each class.
- B. Know the basics of the cases **before coming to class. This means know them in a way you can answer questions as to when, who, what and why.**
- C. A willingness to be an active participant in the class.
- D. A willingness to go beyond any self imposed academic limits.

Course Requirements

1. 3 hours exams approximately 65%(40% objective,60% essay)
2. 2 short papers 3-4 pages approximately 20%
3. Class attendance and participation approximately 15%

T.A. and Office Hours

My T.A. this semester is Mr. Samuel Mead. His office hours will be announced on the first day of class.

Dr. Sager holds office hours in Union Dining area Mon/Wed 1:15-2:15

Wed office hours are at Cactus Cafe in Union near coffee shop 4:15-??

Also available by appointment.

Who Should Not Take This Course?

Anyone prone to putting everything off until the exam and not being willing to keep up with daily assignment—that is unrepentant and unchangeable **PROCRASTINATORS**.

How Can Students Make This Course Easier?

Spend all the time necessary in the first few weeks to do good to excellent briefs and put together a study group. Bring written briefs to class to use if called on. Can also commit briefs to memory.

Prizes

It is my custom to award prizes for the best scores on each exam and the highest average for the semester. For the highest individual exam scores the prize is a U.S. Supreme

Court coffee mug. For the highest average , the prize is a personally engraved plaque with a gavel and the Supreme Court seal and a signed copy, to the winner, of Clarence Thomas's autobiography, [My Grandfather's Son](#). There are other prizes as well, e.g., for most improvement from one exam to another

SUGGESTION Students have found that study groups of from 4 to 8 classmates are extremely helpful in mastering this course.

Highlights:

(Current News & Opinion)

[This section](#) contains articles that directly or indirectly relate to this course. If any will be covered on the exam, it will be so noted in class.

1. Note: Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/> Please let me know what accommodations are needed as early in the semester as possible

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