

# POSC XXX: Constitutional Law: Institutions and Governance

## Department of Political Science

Instructor: Nick Jenkins

Fall 2020

Office Location: Sproul Hall 2228

Classroom: CHASS 1020

Office Hours: W: 4-5pm; TH: 1:30-3:30pm

Class Times: MW: 9 - 10:15am

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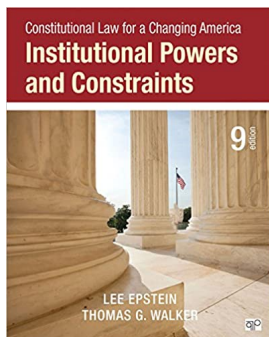
### Course Description

Are states legally allowed to charge out-of-state tuition? Can the president tax any commerce that they wish? Is Congress able to pass any law as long as it has the support of the public? The degree to which the federal and state governments have the authority to enact policy and enforce laws derives from Supreme Court decisions. In this course, we will investigate the extent of the government's power and authority and how it is legally justified. Our focus will also be on how legal and non-legal factors shape Supreme Court decisions.

We will pursue these questions with a hands-on approach. Rather than just reading or listening to me tell you about the law, you will interact with it by writing case briefs, constructing arguments, and forming judicial opinions. The majority of our class time will be spent reading and exploring court cases themselves so you can learn why the court came to the conclusions that they did.

### Required Materials

Textbooks can be boring and expensive - one of the world's worst combinations! I've tried to mitigate both of these in the selection of our course textbook. I spent some time reading reviews of different constitutional law textbooks and picked the one that had the best combination of the highest ratings and lowest cost - one of the world's best combinations! Here is the book we will be using: [Constitutional Law for a Changing America: Institutional Powers and Constraints](#) (9th Edition). This is an excellent book because it uses court cases to explain the material and has great explanations of important aspects of each case. We will be reading a lot of Supreme Court cases and I think this text will be an excellent resource in our journey.



The text primarily focuses on Constitutional issues related to the government's power and authority. I picked the 9th edition because it has some helpful revisions, but nearly every edition of this text has the court cases that we will be discussing in class and those are what is most important part. That means that you can purchase an older (or newer) edition if you'd like ([10th Edition](#), [8th Edition](#), [7th Edition](#)). The 9th edition can be bought used on Amazon for around \$20.

In addition to the textbook, we will also be using several online resources on how to write case briefs ([How to Brief a Case](#)), on [Supreme Court procedure](#), how to read judicial opinions ([How to Read a Judicial Opinion: A Guide for New Law Students](#)) and content and formatting of court documents ([Judicial Writing Manual: A Pocket Guide for Judges](#)).

## Course Promises

In this course, I will make the following promises to you. By the end of the semester, you should be able to:

1. Describe the process of Supreme Court decision making.
2. Describe limits on the state and federal governments.
3. Identify the role of federal courts in establishing public policy.
4. Read and write court briefings and opinions.
5. Develop analytical arguments in support of a legal decision supported by both legal and extra-legal considerations.

## Course Expectations

This course will only fulfill these promises if you promise the following in return:

1. **To attend class.** I have designed this class for the readings and lectures to complement one another. As a result, attending lecture will be an essential component for your to develop a mastery of the course material.
2. **To read the assigned materials.** Similar to the lectures, the readings will provide additional details on each topic that may not be covered in lecture. They will also give you an

opportunity to practice applying your knowledge of American government to understand real world decisions that have been made.

3. **To be attentive and participate in class.** Participation does not only mean speaking aloud in class. Students should participate by actively following class discussions and engaging with lecture activities.
4. **To complete the required assignments in a timely fashion.** The assignments in this course are designed for you, and me, to measure your progress on meeting the course promises. Each assignment will give you practice at mastering these promises and I will give feedback to help guide you in your journey. Providing feedback is time consuming, however, so you will get the most useful feedback, and therefore the most use out of each assignment, only if you turn in your work on time.

## Assignments and Evaluation

The assignments in the class are geared toward giving you first-hand experience with court procedures, documents, and decision making. We'll start out by learning what case briefings are and how to write them in order to prepare you to write briefings on your own. Then we'll have practice making decisions on cases and writing an opinion that is supported by legal arguments. All of these assignments will culminate with a final in-class simulation where you will work with a team to develop an opinion on a pending Supreme Court case and defend it with compelling arguments. Here is a detailed list of the assignments for this class:

1. **Group Case Briefs (2):** Towards the beginning of the semester, we will devote some class time to writing case briefs. In the beginning you will write them with a group of other students so that you can develop your skills as a team before being asked to write briefs on your own. These will be graded on completeness and you can use this guide to prepare your briefs: [Case briefing guide](#). For each case, summarize the facts of the case, major question, holding, and legal reasoning. Include summaries of concurring and/or dissenting opinions, if applicable. Here are the days we will write the group briefs:

- Group Case Brief 1: **September 16th.**
- Group Case Brief 2: **September 30th.**

These briefs should be **1-2 pages double spaced.**

2. **Case Briefs (4):** After developing your case brief writing skills with your group, you will start writing briefs on your own. These will be completed outside of class and will be graded

on accuracy and completeness. Here is a link to the case guide: [Case briefing guide](#). For each case, summarize the facts of the case, major question, holding, and legal reasoning. Include summaries of concurring and/or dissenting opinions, if applicable. Here are the cases you will need to brief and their due dates:

- Korematsu v. U.S. (1944) **Due on October 7th.**
- U.S. v. Morrison (2000) **Due on October 28th.**
- McCray v. U.S. (1904) **Due on November 9th.**
- Stone v. Mississippi (1880) **Due on November 18th.**

These briefs should be **1-2 pages double spaced**.

3. **Midterm Exam:** The midterm exam will involve resolving hypothetical court cases and writing a judicial opinion. It will require you to use your knowledge of existing Supreme Court decisions to make and justify a decision on new case. This exam will be open-note and open-book. **The midterm will be held on October 19th.**
4. **Moot Court and Court Opinions:** In the final two weeks of class, I will divide the class into two groups of two teams and you will work with your team to research and develop arguments for a pending Supreme Court case. In preparation for the hearing, your team will need to compose a persuasive brief and present an effective oral argument. Our class time on December 7th will be devoted to preparing for the case and on December 9th we will proceed with debate. I will randomly select which team is on the affirmative and which is on the negative side, so be sure to prepare for both! **As a group, your brief should be around 6 pages double-spaced** and will need to include the following elements (you can find more details on this outline [here](#)):

- Authorities Cited
  - A list of all cases and journal articles used in the brief.
- Question Presented
  - What is the legal issue presented in the case (you will need to cite relevant sections of the Constitution and/or statute to be interpreted)?
  - The issue should be phrased as a question and in a way that leads to the conclusion you argue for.
- Statement of Facts
  - Who are the parties involved? What are the facts of dispute that are necessary to understand the case?

- What was the decision of the lower court?
- Summary of your Argument (1-2 paragraphs)
- Develop your Argument
  - Most of your argument needs to be directed at addressing why the decision of the lower court was correct or incorrect.
  - Cite some Supreme Court precedents that you believe support your argument and show how these precedents contradict the decision of the lower court.
  - Include other arguments based on legally-relevant and non-legal criteria (e.g. the intent of the framers, economic factors, societal well-being, morality, etc.)
- Conclusion (1 paragraph): Summarize your argument and tell the court what action you want them to take (affirm or reverse).

This brief will need to be formatted as an actual Supreme Court brief. I will post an example on iLearn. **This case brief is due before class on December 9th.**

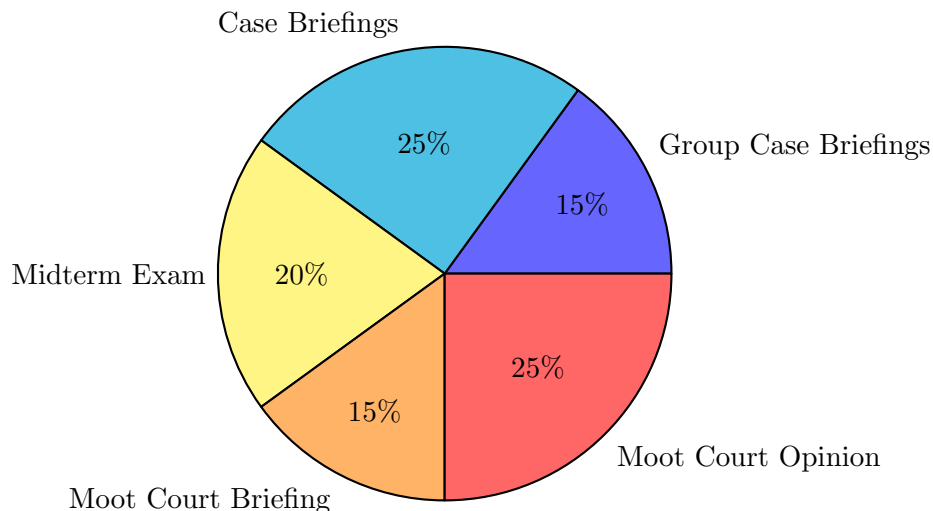
On the day of the debate, each group will have half of the class time to debate their case then, we will switch groups. After class, you will need to write a court opinion as a Justice deciding the case that you observed. Here are the required components of the court opinions:

- You must decide which of the two parties to side with in your opinion. In doing so, use the arguments you found persuasive to justify your opinion (legal arguments, intent of the framers, precedents, etc.). The most important part of your opinion is how well you defend your answer!
- Explain the reasons for your decision and the case precedents that support your decision. You must explain how each precedent supports your decision.
- Your opinion should be **4-5 pages double spaced.**

Follow the guide linked [here](#) for more information on formatting. **The court opinions are due on December 16th.**

**After reading the opinions, I will determine which teams won and the members of the winning team will automatically receive an “A” for the moot court briefing assignment.**

These assignments will constitute your grade in the course and the weight of each of assignment are as follows:



The letter grades will be assigned according to these percentages:

A+	97-100%	B+	87-89%	C+	77-79%	D+	67-69%	F	0-59%
A	93-96%	B	83-86%	C	73-76%	D	63-66%		
A-	90-92%	B-	80-82%	C-	70-72%	D-	60-62%		

## Classroom Decorum and Academic Discourse

For everyone to have the best possible learning experience, we will strive to create a classroom environment that supports respectful, critical inquiry through the free exchange of ideas. As part of learning, it is essential to discuss topics with individual who have different viewpoints than your own and the only way we can better understand one another is if we can carry on a collegial discussion of the topic. Remember, the goal is to become better critical thinkers. To do so we must learn to listen to others and articulate our views in respectful ways. As such, the following principles will guide our discussions:

- Treat every member of the class with respect, even if you disagree with their opinion;
- Bring light, not heat;
- Reasonable minds can differ on any number of perspectives, opinions, and conclusions;
- Because constructive disagreement sharpens thinking, deepens understanding, and reveals novel insights, it is not just encouraged, it is expected;
- No ideas are immune from scrutiny and debate;

- You will not be graded on your opinions;
- Arguments and evidence should be judged *independently* of who offers such arguments and evidence.

Additionally, to build a classroom environment that maximizes everyone's ability to master the course material please be mindful to not distract your fellow learners with your phone, tablet, or computer. It's perfectly fine if you would like to use these devices to take notes during class, but don't use them to distract yourself or your peers! Similarly, if you come late (or must leave early) please to enter/depart the classroom in the least disruptive manner possible. This includes sitting near the door if you anticipate leaving early or taking a seat as near to the door as possible if you arrive late.

## Academic Honesty

I expect that all work you produce for this course will be your own. If you plagiarize any material from outside sources for your written work or presentation in this course, or on the final exam, **it will result in a failure of the entire course.** There are no exceptions to this, and no second chances. Please refer to the university's [Academic Integrity Policies & Procedures](#) if you have questions about these standards.

## Special Accommodations

If you need particular accommodations to help you succeed in mastering this course's material, please contact the [Student Disability Resource Center](#) on campus in Costo Hall 125 to get a personalized accommodation plan.

## Course Outline

This syllabus is a working document. I reserve the right to make changes to the assigned readings (additions or deletions) or to the order of topics we cover as I deem necessary. Announcements regarding schedule changes will be made in class, in discussion sections, or on iLearn.

Also note that this schedule lists the topics of discussion for each class. To master the course material, you should finish each meeting's readings before we discuss them in class. I know that you are taking other classes and probably have responsibilities outside of school, so I have tried to arrange the course readings in a fashion that is as manageable as possible. This class does, however, cover a lot of material and that requires we read cases to understand what the say says and how

it is applied. This schedule also indicates which course promise(s) each class contributes to. They are listed as **CP** followed by the specific promise's number (listed above).

**Tentative Schedule:**

MONDAY	WEDNESDAY
<div>Aug 31st</div> <div>1</div> <p><b>CP 1 &amp; 4</b>  Course Introduction; What is a case briefing?  <a href="#">Learning to read and write a case briefing.</a>  Constitutional Law for a Changing America  Pages 1-10: Wait, what's the Constitution, again?</p>	<div>Sep 2nd</div> <div>2</div> <p><b>CP 1 &amp; 4</b>  Constitutional Law for a Changing America  Ch. 1 Pages 11-45: Getting started with legal procedure. How does the Supreme Court make decisions?  <a href="#">Supreme Court procedure.</a></p>
<div>7th</div> <div></div> <p><b>Labor Day - No Class :(</b></p>	<div>9th</div> <div>3</div> <p><b>CP 1</b>  Constitutional Law for a Changing America  Ch. 1 Pages 47-55: What powers does the Supreme Court have?</p>
<div>14th</div> <div>4</div> <p><b>CP 1</b>  Constitutional Law for a Changing America  Ch. 2: Judicial review and constraints on judicial power.  Marbury v. Madison (1803)  Martin v. Hunter's Lessee (1816)  Ex parte McCardle (1869)  Baker v. Carr (1962)  Nixon v. U.S. (1993)</p>	<div>16th</div> <div>5</div> <p><b>CP 1, 2, 3, &amp; 4</b>  <a href="#">Group Case Brief 1</a>  Constitutional Law for a Changing America  Ch. 3: Congressional authority and legislative power.  Powell v. McCormack (1969)  U.S. Term Limits, Inc. v. Thornton (1995)  McCulloch v. Maryland (1819)  McGrain v. Daugherty (1927)  Watkins v. U.S. (1957)</p>



MONDAY	WEDNESDAY
21st <span style="float: right;">6</span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 4: Where does the president get their power? What power does the president have? Bush v. Gore (2000) In re Neagle (1890) Clinton v. City of New York (1998) Morrison v. Olson (1988)	23rd <span style="float: right;">7</span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 4: More on the domestic powers of the president. National Labor Relations Board v. Canning (2014) Myers v. U.S. (1926) Humphrey's Executor v. U.S. (1935) U.S. v. Nixon (1974) Clinton v. Jones (1997)
28th <span style="float: right;">8</span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 5: The separation of powers system. Mistretta v. U.S. (1989) Immigration and Naturalization Service v. Chadha (1983) Bowsher v. Synar (1986)	30th <span style="float: right;">9</span> <b>CP 1, 2, 3, &amp; 4</b> <b>Group Case Brief 1</b> Constitutional Law for a Changing America Ch. 5: Powers of foreign affairs. Korematsu v. U.S. (1944) Dames & Moore v. Regan (1981) Hamdi v. Rumsfeld (2004)
<div style="border: 1px solid black; padding: 2px;">Oct 5th</div> <span style="float: right;">10</span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 6: The relationships between the states and federal government. Scott v. Sandford (1857) Coyle v. Smith (1911) New York v. U.S. (1992) Alden v. Maine (1999)	7th <span style="float: right;">11</span> <b>Korematsu v. U.S. (1944) Briefing Due</b> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 6: Judicial federalism; Nation beats state. Michigan v. Long (1983) State of Missouri v. Holland (1920) Arizona v. U.S. (2012)

MONDAY	WEDNESDAY
12th <span style="float: right;"><b>12</b></span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 7: Power of commerce. Gibbons v. Ogden (1824) U.S. v. E. C. Knight Co. (1895) tafford v. Wallace (1922) Champion v. Ames (1903) <i>Last day of midterm content</i>	14th <span style="float: right;"><b>13</b></span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 7: The Supreme Court and the New Deal. A. L. A. Schechter Poultry Corp. v. U.S. (1935) U.S. v. Darby (1941) Wickard v. Filburn (1942)
19th <span style="float: right;"><b>14</b></span> (CP 4 & 5) Midterm Exam	21st <span style="float: right;"><b>15</b></span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 7: The Commerce Clause and limits on commerce power. Heart of Atlanta Motel, Inc. v. U.S. (1964) U.S. v. Lopez (1995) U.S. v. Morrison (2000) Gonzales v. Raich (2005)
26th <span style="float: right;"><b>16</b></span> <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 7: The commerce power of state. Colley v. Board of Wardens (1852) Southern Pacific Company v. Arizona (1945) Maine v. Taylor (1986) Granholm v. Heald (2005)	28th <span style="float: right;"><b>17</b></span> U.S. v. Morrison (2000) Briefing Due <b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Pages Ch. 8: The power to tax and spend. Pollock v. Farmers' Loan & Trust Co. (1895) U.S. v. United State Shoe Corp. (1998) South Carolina v. Baker (1988) Davis c. Michigan Dept. of Treasury (1989)

MONDAY	WEDNESDAY
<div>Nov 2nd</div> <div>18</div> <p><b>CP 1, 2, 3, &amp; 4</b>  Constitutional Law for a Changing America  Ch. 8: Taxation as regulatory power and spending for general welfare.  McCray v. U.S. (1904)  U.S. v. Butler (1936)  Steward Machine Co. v. Davis (1937)  South Dakota v. Dole (1987)</p>	<div>4th</div> <div>19</div> <p><b>CP 1, 2, 3, &amp; 4</b>  Constitutional Law for a Changing America  Ch. 8: Limitations on the taxation powers of the states.  Michelin Tire Corp. Wages (1976)  Complete Auto Transit v. Brady (1977)  Quill Corp. North Dakota (1992)</p>
<div>9th</div> <div>20</div> <p><b>McCray v. U.S. (1904) Briefing Due</b>  <b>CP 1, 2, 3, &amp; 4</b>  Constitutional Law for a Changing America  Ch. 9: The contract clause.  Fletcher v. Peck (1810)  Trustees of Dartmouth College v. Woodward (1819)  Stone v. Mississippi (1880)  Home Building &amp; Loan Assn. v. Blaisdell (1934)</p>	<div>11th</div> <div>21</div> <p><b>CP 1, 2, 3, &amp; 4</b>  Constitutional Law for a Changing America  Ch. 9 : Modern applications of the contract clause. U.S. Trust Co. v. New Jersey (1977)  Allied Structures Steel Co. v. Spannaus (1978)</p>
<div>16th</div> <div>22</div> <p><b>CP 1, 2, 3, &amp; 4</b>  Constitutional Law for a Changing America  Pages Ch. 10: The Slaughterhouse Cases (1873)  Munn. v. Illinois (1877)  Allgeyer v. Louisiana (1897)  Muller v. Oregon (1908)</p>	<div>18th</div> <div>23</div> <p><b>Stone v. Mississippi (1880) Briefing Due</b>  <b>CP 1, 2, 3, &amp; 4</b>  Constitutional Law for a Changing America  Ch. 10: Substantive due process continued.  Adkins v. Children's Hospital (1923)  Nebbia v. New York (1934)  West Coast Hotel v. Parrish (1937)  BMW of North America v. Gore (1996)</p>
<div>23rd</div> <p><b>Thanksgiving! - No Class :(</b></p>	<div>25th</div> <p><b>Thanksgiving! - No Class :(</b></p>

MONDAY		WEDNESDAY	
30th	24	Dec 2nd	25
<b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 11: Is your property protected from the government? U.S. v. Causby (1946) Penn Central Transportation Company v. City of New York (1978) Nollan v. California Coastal Commission (1987)		<b>CP 1, 2, 3, &amp; 4</b> Constitutional Law for a Changing America Ch. 11: What counts a “public use” for property? Berman v. Parker (1954) Hawaii Housing Authority v. Midkiff (1984) Kelo v. City of New London (2005)	
7th	26	9th	27
<b>CP 4 &amp; 5</b> Moot Court		<b>CP 4 &amp; 5</b> Moot Court Briefing due at the Beginning of Class Moot Court Preparation	
14th	28	16th	29
		Moot Court Opinion Due on iLearn	