

**POLITICAL SCIENCE 461**  
**CONSTITUTIONAL LAW I**  
**FALL, 2015**

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Office Hours:  
TTH 1:30 – 4:00  
Or by appointment

The purposes of this class are to:

- (1) acquaint students with several substantive areas of American Constitutional Law that deal with constitutional issues relating to the powers of the federal government and the specific operation of each of the three branches of the federal government.
- (2) teach students analytic skills focusing on logical and other legal modes of reasoning,
- (3) develop students' communication skills, both written and oral, and
- (4) provide students with a perspective on the roles played by the United States Supreme Court in American politics.

The required books for this course are:

Lawrence Baum, *The Supreme Court* 11th ed. (CQ Press, 2012) Paperback.

David O'Brien, *Constitutional Law and Politics: Struggles for Power and Governmental Accountability*, 9th ed. Vol. II (Norton, 2014). Paperback

These course materials are required for this course and these texts are available at various sources. They should be purchased at the outset of the semester.

Each student is responsible for:

- 1) reading the appropriate materials **before** EACH class meeting,
- 2) attending each class, prepared to discuss the cases and the other assigned materials, and
- 3) preparing the appropriate written materials for submission at each class meeting.

**Other (Recommended) Materials** These include a variety of readings, both books and articles that provide additional views on various aspects of constitutional law and development. Students should consider consulting one or more of these volumes with regard to the sets of case materials treated in this course.

N.B. David Currie was a leading, contemporary constitutional scholar. The multiple volumes listed immediately below reflect an incredible, detailed, comprehensive examination of the history of Constitutional Law in this country. The work is the penultimate work in Constitutional history.

David Currie, *THE CONSTITUTION IN THE SUPREME COURT: THE FIRST HUNDRED YEARS, 1789-1888*, (University of Chicago Press, 1985).

David Currie, *THE CONSTITUTION IN THE SUPREME COURT: THE SECOND CENTURY, 1888-1986*, (University of Chicago Press, 1990).

The following works, also by Currie are quite esoteric, but very informative regarding how the Congress dealt with constitutional issues up until the Civil War.

David Currie, *THE CONSTITUTION AND CONGRESS: THE FEDERALIST PERIOD, 1789-1801*, (University of Chicago Press, 1997).

David Currie, *THE CONSTITUTION AND CONGRESS: THE JEFFERSONIANS, 1801-1829*, (University of Chicago Press, 2001).

David Currie, *THE CONSTITUTION AND CONGRESS: DEMOCRATS AND WHIGS, 1829-1861*, (University of Chicago Press, 2005).

David Currie, *THE CONSTITUTION AND CONGRESS: DESCENT INTO THE MAELSTROM, 1829-1861*, (University of Chicago Press, 2005).

When Justice Oliver Wendell Holmes, Jr. died in 1935, he gave the residual of his estate, some \$230,000 at the time, to the United States. This was unique since no one wills their estate to the government. It took a variety of government leaders several decades to determine that the "Oliver Wendell Holmes Devise" should result in a multi-volume History of the Supreme Court. The volumes listed below have been published over more than 40 years. These provide a detailed, if uneven, perspective on the development of the Court and the events that shaped the Court during various periods of our history. The two volumes that are "boxed" are forthcoming, and not yet available.

Julius Goebels, Jr., *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: ANTECEDENTS AND BEGINNINGS TO 1801, Vol. I* (Macmillan, 1971).

George Haskins & Herbert Johnson, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: FOUNDATIONS OF POWER, JOHN MARSHALL 1801-1815, Vol. II* (Macmillan, 1981).

G. Edward White, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE MARSHAL COURT AND CULTURAL CHANGE, 1815-1835, Vol III-IV* (Macmillan, 1988).

Carl Swisher, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE TANEY PERIOD, 1836-1864, Vol V* (Macmillan, 1974).

Charles Fairman, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: RECONSTRUCTION AND REUNION, 1864-88, Part One Vol VI* (Macmillan, 1971).

Charles Fairman, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: RECONSTRUCTION AND REUNION, 1864-88, Part Two Vol VII* (Macmillan, 1987).

Charles Fairman, *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: FIVE JUSTICES AND THE ELECTORAL COMMISSION OF 1877, Supplement to Vol VII* (Macmillan, 1988).

Owen Fiss, *History of the Supreme Court of the United States: TROUBLED BEGINNINGS OF THE MODERN STATE, 1888-1910, Vol VIII* (Macmillan, 1999).

Alexander Bickel & Benno Schmidt, Jr., *HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE JUDICIARY AND RESPONSIBLE*

GOVERNMENT, 1910-1921, Vol IX (Macmillan, 1984).

Robert Post, HISTORY OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL RIGHTS AND THE REGULATORY STATE, 1921-1930, Vol X ().

Richard Friedman, HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE CRUCIBLE OF THE MODERN CONSTITUTION, 1930-1941, Vol XI ().

William Wiecek, HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE BIRTH OF THE MODERN CONSTITUTION, 1941-1953, Vol XII (Cambridge University Press, 2006).

## GRADES

The grades for this course will be based on a variety of oral and written work. These include: (1) Oral Participation in class discussions, (2) a Class Project, (3) the daily, Written Assignments, and (4) a Final Examination. The relative weights of these grades for the Final Grade are as follows:

Grade Component	Weight
Class Participation	35%
Class Project	30%
Written Assignments	20%
Final Examination	15%
<b>Total</b>	<b>100%</b>

**Class participation** will focus on daily, in-class discussions of the assigned materials (particularly the cases covered in the casebook and hypotheticals presented in class). Individual student's responses to questions posed in class will form the basis of this part of the Grade. The process involves the instructor "calling on," i.e., questioning, individual students a variety of times during (throughout) the semester. These discussions will be based on the assigned readings from the O'Brien casebook, plus hypotheticals that emerge from the cases or the discussion outlined in the casebook. The quality of each student's response to those questions will be graded. **Class attendance is required, and each student will be expected to be in class and prepared to discuss assigned class materials every day.** Voluntary questions and comments during class are always welcome when the comments relate to the cases and the materials under discussion. However, these voluntary contributions WILL NOT be graded for purposes of this part of the Final Grade.

Students are expected to attend class, prepared to discuss the assigned reading materials. That requires several items: (1) continual, advanced preparation of all the assignments (both reading and writing assignments), (2) regular and sustained class attendance, and (3) bringing case notes and other course materials to each class in order to engage in class discussion. **Preparation** of assignments may involve using Lexis-Nexis or doing library

research as well as reading the cases and other materials in the Casebook (O'Brien). Preparation will often require more effort and time than just going through the assigned materials. First, "reading" means **understanding**, not just looking at the words quickly, or using shortcuts to "get through" the assigned materials. Understanding the concepts, logical reasoning, and technical materials contained in court opinions, statutory provisions, constitutional provisions will require careful, slow reading. In addition, it requires **THINKING** about the materials both as they are read and later. Second, understanding requires **remembering** what you have mastered. Students will be expected to remember cases read (mastered) at earlier stages of the course, throughout the semester. Students are expected to recall these materials when they are relevant to class discussion. This level of mastering materials may be frustrating because it is labor intensive and time consuming. However, students will learn these techniques and skills to master the materials for this course successfully. It is important to begin gaining these skills at the very outset of the semester, so that one does not become "lost" or fall way behind at some later point during the term. The reading in this course becomes more complicated throughout the semester.

**Class attendance** is required for this course and absences from class, whatever the reason for the absence, are NOT excused, but with the bereavement exception outlined below. Such absences can be explained, but students remain responsible for all the material covered, presented, or due in class. That includes announcements and assignments that are made in class. It is not at all necessary for students to explain absences to the instructor. Students should pickup assignments, announcements, and the like from fellow students for those days when they are absent. The instructor will NOT repeat announcements or discussions for the benefit of students who do not attend class. Given the nature of classes in this course, it is not possible for students to "make-up" class meetings that they miss. It is not possible to learn how to think analytically and to write clearly and analytically unless students engage in those activities daily, in class! No electronic or in-absentia submissions of daily writing assignments will be accepted. In addition, all students will be randomly called on in class to discuss cases or other legal materials (See the discussion regarding Class Participation *supra*.). As noted clearly above, students are to be prepared on all the materials for all classes so that they can answer questions and follow the class discussion even if they are not called on for a particular question. Absences from class will be graded if the student is called on at that class session, just as students who are not prepared for class will be graded when called on to answer questions. That really means that students must attend class, prepared every day, and they are responsible for all the materials covered in the class throughout the semester. The class participation grade can be seriously damaged by absences from class. (Attending class but not being able to discuss the cases for the day will also severely harm the class participation grade. Reading cases in advance is certainly required, but forgetting them or not reviewing those classes closely just before class each day, means virtually that the student is not prepared for class and cannot discuss the class.)

Class discussions are a vital part of this course. As a result, it is important to listen respectfully to what other students contribute when they are responding or commenting on the subject. Respect for your classmates is very important. Please remember to turn off

all electronic devices before coming into class. Ringing devices are a terrible distraction and will result in the immediate end of class. If cell phone calls or texting is vital to your continued existence, then please do not attend class.

The **Class Project** will be an extensive research project that requires thinking, writing, and research efforts on the part of each student. A separate document relating to this assignment will be distributed later in the semester. Due dates for the project will be announced later. The Project will be due late in the semester.

The **Written Assignments** will require students to complete a number of short, daily writing efforts throughout the semester. Students must complete and submit these at the assigned class meetings. The form of these is indicated on the Writing Assignment handout for this class. These assignments have two purposes. These serve to develop the ability of students to write succinctly, directly, and clearly. In addition, the preparation of these assignments is to insure student preparation for class each day and to develop efficient writing skills on the part of all students. Students need to learn to write clearly, concisely, and quickly, as well as regularly. Students will prepare these written assignments as announced in class. The assignments will involve brief, typed documents. **LATE (or early) SUBMISSIONS WILL NOT BE ACCEPTED.** The value of these writing assignments for learning course material involves the timely preparation of materials for class discussion. Furthermore, these written briefs will form the basis of class notes, so it is important for students to make two copies of these materials, one which they can annotate and refer to during class, the other that they submit for evaluation at the beginning of class. It is important that students develop abilities to write clearly, concisely, directly, and analytically, throughout the semester. These assignments are to be submitted in typed, single-spaced form, with your name on each page of each assignment.

These written assignments should form the "notes" for this course. The class meetings will not provide a set of "lecture notes" in the traditional sense. Each case you read should be briefed, in writing, and those should be brought to class on the days they are scheduled to be discussed. Then they can be annotated in class with other items that develop during the class discussion. There should be no excuse for a student who cannot state the holding in a case or the reasoning the court used to reach and justify that holding. There is a separate handout on briefing cases for this course.

The first few days of the course will be devoted to discussing general materials relating to the Supreme Court, such as those covered in the Baum textbook. As a result, students are expected to read the Baum book completely and immediately, before **Thursday, August 27th**. This is an initial, heavy reading assignment, and the focus of class discussion during the first two weeks of class will be on the Supreme Court as an institution. For that purpose, Baum's book is essential and should be mastered. After a brief discussion of the legal "context" in which the Supreme Court operates – these preliminary matters – the course will turn to the substantive materials (the cases) in O'Brien.

Students will be expected to keep up with the progress of the class. (The pace of these class meetings will be very slow at the outset, but the rate of progress will pick up

later in the semester.)

The **Final Examination** in this course will be that, a “Final.” It is very unlikely to be an in-class or traditional Final Exam. Rather it will probably be a “take-home” requiring students to complete the work by the regular time and day of the scheduled Final Examination in December. Students should plan to receive the Exam during the last week of classes for the semester, and to submit the completed examination no later than the time the Registrar has scheduled for the Final Examination.

### GENERAL NOTICES

The following items are important for you to know about and to understand. These are statements provided by the University. They relate to matters of general concern and that might affect you as a student generally or in this class during the term.

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Purdue University recognizes that a time of bereavement is very difficult for a student. The University therefore provides the following rights to students facing the loss of a family member through the Grief Absence Policy for Students (GAPS). GAPS Policy: Students will be excused for funeral leave and given the opportunity to earn equivalent credit and to demonstrate evidence of meeting the learning outcomes for missed assignments or assessments in the event of the death of a member of the student’s family.

Purdue University is committed to providing a safe and secure campus environment for members of the university community. Purdue strives to create an educational environment for students and a work environment for employees that promote educational and career goals. Violent Behavior impedes such goals. Therefore, Violent Behavior is prohibited in or on any University Facility or while participating in any university activity.

Purdue University is required to respond to the needs of the students with disabilities as outlined in both the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 through the provision of auxiliary aids and services that allow a student with a disability to fully access and participate in the programs, services, and activities at Purdue University.

If you have a disability that requires special academic accommodation, please make an appointment to speak with me within the first three (3) weeks of the semester in order to discuss any adjustments. It is important that we talk about this at the beginning of the semester. It is the student's responsibility

to notify the Disability Resource Center (<http://www.purdue.edu/drc>) of an impairment/condition that may require accommodations and/or classroom modifications.

In the event of a major campus emergency, course requirements, deadlines and grading percentages are subject to changes that may be necessitated by a revised semester calendar or other circumstances beyond the instructor's control.

Purdue University is committed to maintaining a community which recognizes and values the inherent worth and dignity of every person; fosters tolerance, sensitivity, understanding, and mutual respect among its members; and encourages each individual to strive to reach his or her own potential. In pursuit of its goal of academic excellence, the University seeks to develop and nurture diversity. The University believes that diversity among its many members strengthens the institution, stimulates creativity, promotes the exchange of ideas, and enriches campus life.

Purdue University prohibits discrimination against any member of the University community on the basis of race, religion, color, sex, age, national origin or ancestry, genetic information, marital status, parental status, sexual orientation, gender identity and expression, disability, or status as a veteran. The University will conduct its programs, services and activities consistent with applicable federal, state and local laws, regulations and orders and in conformance with the procedures and limitations as set forth in Executive Memorandum No. D-1. This provides specific contractual rights and remedies that operate at Purdue University. Any student who believes they have been discriminated against may visit [www.purdue.edu/report-hate](http://www.purdue.edu/report-hate) to submit a complaint to the Office of Institutional Equity. Information may be reported anonymously.

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**N. B. doing legal research and findings court cases using legal citations is outlined systematically in O'Brien in on pp. 1107-12. In addition, there is a separate document on reading and briefing cases that has been Distributed in class. You might find those materials helpful, at least at the beginning of the semester.**

**N.B. If a case is listed below in bold, with the citation, that means the case is NOT satisfactorily excerpted in the O'Brien case book and the student is expected to read the full opinion of the case in a law reporter.**

<b>Class and Learning</b>
<b>You are encouraged to discuss your course work and the subjects covered in class with the instructor outside of class. If you have</b>

**difficulty understanding the readings or if you would like to talk about the cases, please talk with the instructor during the scheduled office hours or by appointment. If you have questions about your grade, please contact the instructor right away. DO NOT WAIT UNTIL THE END OF THE SEMESTER TO DISCUSS THE COURSE MATERIALS OR YOUR GRADE. PROBLEMS MAY BE EASILY RESOLVED WHEN THEY ARISE BUT OFTEN LATER IN THE TERM RESOLUTION MAY NOT BE POSSIBLE! DELAYING A DISCUSSION MAY PREVENT THE RESOLUTION OF THE QUESTION OR PROBLEM.** That difficulty can be avoided by raising issues or problems when they arise, rather than waiting..

Students should note that progress or improvement in the course throughout the semester is an important indicator of how much the student has learned and how well the student has learned the course material. Students should not be concerned if their early work (written and oral) is not “perfect.” This course involves a unique learning process (a steep “learning curve”) and a new way of thinking and analyzing. Students will learn a good deal during the semester, rather than to know a great deal at the beginning of the term. Learning this material is a cumulative process and immediate or complete understanding should not be expected. If students do not think they are “learning” during the semester, they should talk with the instructor about this concern. If students feel frustrated during the semester, it is quite all right to talk about these concerns with the instructor, and students are encouraged to do that. “Frustration” can be expected in this course, because there are NO CORRECT ANSWERS TO MANY OF THE QUESTIONS that are raised. That is rather abnormal for courses, but it is quite true of a course in Constitutional Law. Students should expect to engage in any number of informal discussions with the instructor **or** with other class members throughout the semester about the course material. Learning requires a substantial commitment on the part of the student, and students must be prepared to invest time and effort in this process. Otherwise, the learning will not be satisfactory but that disappointment can be prevented.

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