

MARQUETTE UNIVERSITY
POSC 133 Constitutional Law
Fall, 2007 2:25 - 3:40 MW (Wehr Physics 138)

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Office Hours: MW 1:50 - 2:20 and 3:45 - 4:45, or by appointment

COURSE OBJECTIVES*

We will study the development of constitutional law in the areas of judicial power, legislative power, executive power, separation of powers, federalism, national and state regulation of commerce, and the rise and decline and reinvigoration of property rights. In this study we will attend both to the particular questions raised by given cases and to the broad underlying question of the nature and extent of judicial power in the American democratic republic. The aims of the course are to (1) increase our knowledge of American political and legal history, (2) provoke thought on a number of broad and enduring political questions by the study of intelligent opinions on both sides, and (3) sharpen skills in reading, logical analysis and clear, precise articulation of ideas (in speech and writing).

COURSE REQUIREMENTS

1. Regular class attendance - there should be no unexcused absences. (See #3 and #6 below.)
2. Careful and punctual reading of assignments: all major cases should be briefed to make possible effective class participation. (I will describe a brief in class, but there is also a copy on library reserve of an appendix on "Briefing a Case" from an earlier edition of your Ducat casebook.)
3. Quizzes - on Mondays, on the cases for the week, unless otherwise announced; unexcused absence from a quiz counts as a zero; please submit excuses in writing (*only* for days on which there were quizzes), so that I don't forget and inadvertently penalize you: 30%
4. Midterm (Oct 17): 20%
5. Final (Dec 12, 8 am): 50% (first part on the second half of the course [30%], second part cumulative on the broad themes of the whole course [20%].)
6. Class performance: +/- a letter grade. (Frequent absences from class, therefore, may affect your grade, since they make class participation impossible) <http://www.marquette.edu/pages/home/resourcecommons/bulletin>

REQUIRED READING

Ducat *Constitutional Interpretation*, 8th Ed. (available in the bookstore and online)

[Note: The "officially" assigned reading includes *only* the cases themselves. Read the Ducat notes, if you wish, but be aware that they vary in quality, and give priority to the class discussion.]

Federalist Nos. 10, 51, 70 (on library reserve)

McCloskey, Robert "Economic Due Process and the Supreme Court" (on library reserve)

Wolfe, Christopher *The Rise of Modern Judicial Review*, Introduction, Conclusion, and Afterword (on library reserve)

selected Supreme Court cases - the cases in brackets below, which are not in Ducat (on library reserve)

[note: The full text of cases is available through the Marqcat website: go to Journal Articles, Databases & Other E-Resources, then at "click on discipline" - choose Law, then Lexis-Nexis Academic Universe, then Legal Research, then Get a Case--typing in the name of the parties to the case.]

*University-Mandated Statements

I) Statement of Course Learning Objectives:

Upon completion of this course, the student should be able to:

- 1) give an accurate account of key cases in American constitutional law regarding the structure and powers of government
- 2) discuss intelligently different aspects of, and opinions regarding, certain important, broad, and enduring political questions (e.g., separation of powers, federalism, property rights)
- 3) read more carefully, think more logically, and express ideas more clearly (in speech and writing).

II) Statement on academic honesty: Do not cheat. It hurts you (you don't learn) and others too (when grades are curved).

(Further information available at: <http://www.marquette.edu/rc/academichonesty.shtml>)

CLASS SCHEDULE

(this generally gives you the reading for the week, which will be on the quiz each Monday; you should check ahead regularly to see how much reading there is the following week, so that you can be prepared if some weeks have particularly heavy reading loads)

Aug. 27 Introduction (Review syllabus, how to brief a case)
29 *Marbury v. Madison* (starting with a “practice quiz”)

Sept. 5 *Eakin v. Raub*

10-12 *McCulloch v. Md.*, *Missouri v. Holland*

17 *J.W. Hampton v. U.S.*, note on *Panama Refining Co. v. Ryan* and *Schechter Poultry Corp v. U.S.* (pp.132-34); [*Whitman v. American Trucking Assn*]

19 *Federalist* No. 70, *Myers v. U.S.*, *Humphrey's Executor v. U.S.*

24-26 [*Prize Cases*], *U.S. v. Curtiss-Wright*, *Youngstown v. Sawyer*, *U.S. v. Nixon*

Oct. 1-3 *Hamdi v. Rumsfeld*, *Rasul v. Bush*, *Hamdan v. Rumsfeld*

8-10 *Federalist* No. 51, *I.N.S. v. Chadha*, *Bowsher v. Synar*, *Morrison v. Olson*, *Clinton v. NYC*

15 [*National League of Cities v. Usery*], [*Garcia v. San Antonio Metropolitan Transit Authority*], *New York v. U.S.*, *Printz v. U.S.*; note on 11th Amendment: *Seminole Tribe of Fla. v. Fla.* and *Alden v. Maine* (pp. 339-41)

17 MIDTERM

22-24 *Gibbons v. Ogden*, *Cooley v. Board of Wardens*, [*So. Car. State Highway Dept. v. Barnwell Bros.*], [*So. Pacific RR v. Ariz.*], [*Bibb v. Navajo Freight Lines*], [*Dean Milk v. Madison*], *Kassel v. Consolidated Freightways*

29-31 *U.S. v. E.C. Knight*, *Champion v. Ames*, *Houston East-West Railway v. Texas (Shreveport Case)*, *Hammer v. Dagenhart*, *Stafford v. Wallace*, *Schechter Poultry v. U.S.* (pp. 307-08), *Carter v. Carter Coal*, *NLRB v. Jones-Laughlin*, *U.S. v. Darby*, *Wickard v. Fillburn*, *Heart of Atlanta v. U.S.*, *Katzenbach v. McClung*; *U.S. v. Lopez* [note: Thomas concurrence on library reserve], *U.S. v. Morrison*, [*Gonzalez v. Raich*]

5-7 [*Calder v. Bull*], *Fletcher v. Peck*, *Dartmouth College v. Woodward*, note on *Chas. River Bridge v. Warren Bridge* (pp. 419-20), *Home Building and Loan v. Blaisdell*, *U.S. Trust v. N.J.* (p. 426)

12-14 *The Slaughterhouse Cases*, *Munn v. Ill.*, *Allgeyer v. La.*, *Lochner v. N.Y.*, *Muller v. Ore.*, *West Coast Hotel v. Parrish*

19 McCloskey “Economic Due Process and the Supreme Court”

26-28 [*Pa. Coal v. Mahon*], *Penn Central v. N.Y.*, [*Lucas v. South Carolina Coastal Council*], *Dolan v. Tigard*, [*Kelo v. New London*]

3-5 *The Rise of Modern Judicial Review*, pp. 3-11, 323-336, 379-401; *Federalist* No. 10; *Carolene Products* footnote (handout)