Overview
This course focuses on the development of American Constitutional law in the areas of structures, e.g. federalism, commerce clause, property rights, and executive power among others. Most of the assignments involve reading and analyzing judicial opinions in actual cases. These opinions not only reveal what various justices think Constitution says about the issues at hand, they also reveal how justices think and reason as well as interact with the arguments of others who disagree with their point of view. We will also pay close attention to the theories of interpretation embedded, often to the point of being purposely hidden, in all of these opinions.

Due to the growth of Youtube, there are a plethora of video materials related to this course. These can be found on the Videopage which is also linked on the Assignment page. These materials include historical re-enactments of some of the major early cases we cover in the course, historical footage of events that affect the Court and creative videos, often prepared by students, that illuminate concepts and facts we are covering.

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.
To have students develop a high level of skill in reading, briefing and understanding Supreme Court opinions, 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, videos 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 Ilana Lifshitz, <il2359@utexas.edu> She was worked with me as a T.A. in all of my courses. Her office hours will be posted when she receives an office assignment from the Government Department

**Office Hours:**
Mon-Wed 1:30-3:00 Texas Union in front of Wendy’s; Wed 4:45-6:00 Cactus Cafe at the Union. Also available by appointment.

Campus office: Mezes B.2.232

Email address is: amsag@utexas.edu. An alternate address is class13@alansager.com. To reach Dr. Sager by phone, call 512-476-3891 ext 756. Best not to leave a message on his phone in Government Department.

**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.

**Prizes:**
It is my custom to award prizes for the best paper for each assignment, the best score 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 an 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.

Books:


4. Burton Folsom, *New Deal, Raw Deal*

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/ssp/](http://www.utexas.edu/diversity/ddce/ssp/) Please let me know what accommodations are needed as early in the semester as possible
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. 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.

Lastly, Dr. Sager will discuss some cases as noted. Asterisked cases are in the supplement. Other cases he will cover are neither in the main text nor on the website containing supplemental cases. 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 that appear on the videopage.

Class #1
Monday, January 14th
Introduction

Read Epstein and Walker 1-63 (This is introductory material and some is similar to Van Geel. We will cover some of it directly in class, especially the charts and graphs which will be on the exams.)

Begin reading Van Geel and complete it as rapidly as possible.

A. Pre-Marshall and Marshall Court 1787-1835
   Property Rights and Transcendent Rights
   1. Calder v. Bull(brief) ([link](#))

Note: This pre-Marshall case is written differently than later cases. Each of the 4 Justices who heard the case wrote an opinion. For some notes on reading this case [click here](#). Quotes about the Constitution which will be cited in Class 1 ([click here](#))

Class #2
Wednesday, January 16th

The Taxing Power

   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.

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 Jefferson’s responses to various people about Marbury and Joel Grossman’s excellent analysis on the 200th Anniversary of Marbury, you can find it toward bottom of highlight section of home page. Note Grossman’s question at the end written in 2004 and which will be answered at the end of this course.

How many different arguments can you find in Marshall’s opinion in favor of judicial review by the Supreme Court. You should get at least 4

4. Eakin v. Raub (brief) (only dissenting opinion is given)
Read Federalist No. 78 in Epstein and Walker Appendix.

Videos 4, 5, 6

Class #3
Wednesday, January 23rd

Other Early Challenges To Judicial Supremacy

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

6. U.S. v. Aaron Burr 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. Watch the Burr video before class: U.S. v. Aaron Burr (Youtube video in 2 parts on video page) #14 on the video page. Note: THIS VIDEO IS 1 HOUR LONG

Congressional Powers and the States

7. McCulloch v. Maryland (brief)
For a critique of Marshall’s view [click here]
Class #4
Monday, January 28th

The Contracts Clause and Property Rights

8. Fletcher v. Peck (Brief)

Federal Judicial Power and the States

9. Chishom v. Georgia (Brief) (supplement)

10. Martin v. Hunter’s Lessee (Brief)

Class #5
Wednesday, January 30th

The Contracts Clause II

11. Dartmouth College v. Woodward (Brief)

Federal Judicial Power and the States

12. Cohens v. Virginia (supplement)*

The Commerce Power and National Economy

13. Gibbons v. Ogden (Brief)

View video: Gibbons v. Ogden

View Clip #30 on video page, Justice Roberts on Justice Duval who appears in several of the case videos. Roberts calls him the most insignificant Justice ever. Might look at
comments on video as well

Begin reading Folsom, *The Myth of the Robber Barons*. First couple of chapters refer to *Gibbons* case

---

**Class #6**  
Monday, February 4th  
Click here for Van Geel chart covered in Class #5

**Federal Power and the State Taxation**

14. *Brown v. Maryland* (supplement)*

**The Bill of Rights and the States**


*B. Taney Court 1836-1864*

**The Commerce Clause and the National Economy**


**The Contracts Clause and the National Economy**

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

---

**Class #7**  
Wednesday February 6th

**Congressional Preemption –Federal Judicial Power and the States**

18. *Prigg v. Pennsylvania*(see sample brief)*

**Federal Jurisdiction: Political Questions**
19. Luther v. Borden (supplement) (brief)
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

Paper Number 1 Assignment (click here)

Class #8
Monday February 11th 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.)
Class #9
Wednesday February 13th

Executive Power

26. Mississippi v. Johnson (Brief)

Congressional Taxing Powers

27. Collector v. Day (supplement)


The Bill of Rights and the States

29. The Slaughterhouse Cases (Brief)

Paper #1 Due in Class

Two copies

Class #10
Monday, February 18th

Exam #1

Class #11
Wednesday, February 20th

D. The Waite Court 1874-1888

State Police Powers, Due Process and Property Rights

30. Munn v. Illinois (Brief)

The Contracts Clause

31. Stone v. Mississippi (Brief)

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. Minnesota (Brief) (supplement)

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 Class 16 and 17.

Class 12
Monday, February 25th

The Commerce Power, Taxing Power and the National Economy

35. U.S. v. E.C. Knight (Brief)

36. Champion v. Ames (Brief)

37. McCray v. United States (Brief)

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)
State Police Powers, Due Process and Property Rights

40. Lochner v. New York (Brief) (Click here for votes) (Votes at bottom of chart are totaled as uphold vs. struck down. 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)

41. Muller v. Oregon (Brief)

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)

The Commerce Clause and the Treaty Clause

44. Missouri v. Holland (brief)

Class 14
Monday, March 4th

G. The Taft Court 1921-30

Taxing Power

45. Bailey v. Drexel Furniture (Brief)  

Federal Judicial Power: Standing

46. Frothingham v. Melon (Brief) (supplement)*

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

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 is should be otherwise.”

Compare to Hughest and Sutherland quotes in Blaisdell

52. Pennsylvania Coal Company v. Mahon (Brief) (supplement)

H. The Hughes Court 1930-1941

The Contracts Clause

53. Home Building and Loan Assoc. v. Blaisdell (Brief)

Executive Powers: Removal

54. Humphrey’s Executor v. U.S. (Brief)

Class 16
Monday, March 11th
State Police Powers, Due Process and Property Rights

55. Nebbia v. New York (Brief)

The Commerce Power, The National Economy and
<table>
<thead>
<tr>
<th>Class 17</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wednesday, March 13th</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Commerce Power and the National Economy</th>
</tr>
</thead>
<tbody>
<tr>
<td>59. NLRB v. Jones and Laughlin Steel(Brief)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Taxing and Spending Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>60. Steward Sewing Machine v. Davis(Brief)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Videos 1, 1a, 2, 2a and 2b (these will be on 2nd exam)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Executive Powers: Treaty and War Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>61. U.S. v. Curtis Wright(brief)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Judicial Review, Due Process, Congressional Power and the National Economy</th>
</tr>
</thead>
<tbody>
<tr>
<td>62. U.S. v. Carolene Products(Dr. Sager to discuss. Not in book or supplement)</td>
</tr>
</tbody>
</table>
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)

Executive Powers: The War Power

65. Ex Parte Quirin(Brief)

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

For an interesting discussion of Executive War Powers in context of Libyan use of force click here. This is an edited discussion on the conlawprof listserv. Should be read from last page back since each person writing adds his or her comments to the previous comments.

The Commerce Power and the States: The Dormant Commerce Clause

67. Southern Pacific v. Arizona(Brief)

Class 19 Wednesday, March 27th

Exam #2 In class
Class 20
Monday, April 1st

J. The Vinson Court 1946-1953
(For brief discussion of Black-Jackson feud that partially revolved around successor to C.J. Stone (click here))

Takings

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

Executive Powers The War Power

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

Video 13

K. The Warren Court 1953-1969

Takings: Public Use

70. Berman v. Parker(Brief)

Congressional Preemption

71. Pennsylvanina v. Nelson(Brief)

Congressional Powers: Investigation

72. Watkins v. U.S.(Dr. Sager to discuss)

73. Barenblatt v. U.S. (Dr. Sager to discuss)

Class 21
Wednesday, April 3rd

Federal Judicial Power

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

For some parts of a relatively short opinion click here)

Federal Jurisdiction: Political Questions

75. Baker v. Carr(Brief)

The Commerce Power and the National Economy

76. Heart of Atlanta Motel v. U.S.Brief)
Modern Substantive Due Process

77. Williamson v. Lee Optical (Brief)

Federal Judicial Power: Standing

78. Flast v. Cohen (Brief)

Class 22
Monday, April 8th

Congressional Power: Taxation
79. U.S. v. Kahringer (Brief) (Supplement)
Congressional Power: Privileges
80. Powell v. McCormack (Brief)

Executive Powers: The War Power
82. U.S. v. U.S. District Court (Dr. Sager to discuss. Not in book or supplement)

Takings
83. Hawaii Housing Authority v. Midkiff (Brief)

The Commerce Power
84. Hunt v. Washington State Apple Advertising (Brief)

Class 23
Wednesday, April 10th

Congressional Powers: Privileges
85. Gravel v. U.S. (Brief)
<table>
<thead>
<tr>
<th>Class 24</th>
<th>Monday, April 15th</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Review and Executive Powers: Executive Privilege</td>
<td></td>
</tr>
<tr>
<td>86. U.S. v. Nixon(Brief)</td>
<td></td>
</tr>
<tr>
<td>The Commerce Power and the National Economy</td>
<td></td>
</tr>
<tr>
<td>87. National League of Cities v. Usery(Brief)</td>
<td></td>
</tr>
<tr>
<td>88. Garcia v. San Antonio Metropolitan Transit Authority(Brief)</td>
<td></td>
</tr>
<tr>
<td>The Contracts Clause</td>
<td></td>
</tr>
<tr>
<td>90. Allied Structural Steel v. Spannus(Brief)</td>
<td></td>
</tr>
<tr>
<td>Class 25</td>
<td>Wednesday, April 17th</td>
</tr>
<tr>
<td>Congressional Powers: Delegation and Legislative Veto</td>
<td></td>
</tr>
<tr>
<td>95. I.N.S. v. Chadha(Brief)</td>
<td></td>
</tr>
</tbody>
</table>
Congressional Powers: Delegation

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

M. Rehnquist Court 1986-2005

Congressional Powers: Delegation

97. Morrison v. Olson (Brief)

98. Mistretta v. U.S (student brief to be posted) (click here brief #1) (click here brief #2)

The Taxing and Spending Power

99. South Dakota v. Dole (Brief)

State Taxing Powers

100. Oregon Waste Systems v. Department of Environmental Quality of State of Oregon (student brief to be posted) (click here brief #1) (click here brief #2)

Class 26
Monday, April 22th

Takings: Regulation and Public Use

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

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

The Commerce Clause, 10th Amendment and the National Economy

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

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

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

106. Granhom v. Heald (click here brief #1) (click here brief #2)

107. Gonzales v. Reich (click here brief #1) (click here brief #2)
Class 27 Wednesday, April 24th

Congressional Power

108. Clinton v. New York (student brief to be posted) (click here brief #1) (click here brief #2)

Formalist/Functionalist case/voting chart (Click here)

Executive Powers: Immunity

109. Clinton v. Jones (student brief to be posted) (click here brief #1) (click here brief #2)

Federal Judicial Power and the States

110. U.S. Term Limits v. Thorton (basically covered with Powell v. McCormick)

111. Central Virginia Community College v. Katz (Brief)

112. Alden v. Maine (Brief)

Class 28 Monday, April 29th

Executive Powers: War Powers
113. Hamdi v. Rumsfeld (click here brf #1) (click here brf #2)

M. Roberts Court 2005-??

Executive Powers: War Powers
114. Hamdan v. Rumsfeld (Brief)

115. Boudmienne v. Bush (Brief)

Judicial Power: Standing

116. Heine v. Freedom of Religion (click here brf #1) (click here brf #2)