"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 in the next place, oblige it to control itself."  (Madison, Federalist 51)

Introduction:

The Supreme Court stands atop of both the federal and state judicial systems. It is the final arbiter of all federal legal questions. The placement of the Court as referee in our polity means that the Supreme Court, whether liberal or conservative, activist or retrained, is by default a major policy maker. Each time the justices deliver an opinion, the practices, procedures, and powers that govern our governments are affected.

Not surprisingly most people, when they thinking about the Supreme Court, tend to focus on the Court's role in the area of civil liberties. And, most certainly, this portion of the Court’s docket and history represents a visible and controversial part of the Court's role in our government. The Court's role in defining how an individual interacts with the government is an important area of study. Yet, just as important--if not more so--are the powers and constraints placed on our government by the fabric of the Constitution. How do the different levels and branches of government interact with one another? What powers does the Constitution bestow on the Court, on the President and on Congress? Are these powers separated or shared? How much or which powers can be shared? Where are the boundaries of these powers? How far can the President push his powers? Can Congress find a way to reassert its influence on national policy? How do we define the relationship between the federal and state governments? Is the current Court changing this relationship and how? The answers to these questions determine how our government functions, and these answers can be found by studying the trends of constitutional doctrine from the founding to the present, with a strong emphasis on the cases of the founding period through the early 1900s. We will not, however, ignore the current trends in these subject areas informed by decisions of the Rehnquist and Roberts Courts.

In this course, we will analyze the powers of the judiciary, the executive, and the legislature, as well as, discuss issues of interstate commerce and federalism. Through analyses of the case law, we will gain knowledge of the Constitution and its possible interpretations, as well as an understanding of the Supreme Court, the role it plays in our government, and the legal and political facets of this role. Through these exercises, we will begin to understand that the nature of our government changes even though the Constitution has, for the most part,
remained unchanged.

While we will spend most of our time concentrating on the Supreme Court and its decisions, it is foolish to presume in a federal system, with equal institutions sharing power, in a federal system that values state sovereignty, that the Supreme Court is the only institution that affects the meaning of our Constitution. Throughout this term, we will examine the role of other institutions in creating meaning for parts of the Constitution both in the earlier period of our country’s development and in the modern era.

We will pay considerable attention to many areas of governmental powers and constraints, however in depth study of this subject matter is impossible in the time frame of one term. Therefore, we will look at our subject areas as snapshots, looking briefly at particular times, interpretations, and doctrines by highlighting and studying the leading cases in each area or the leading events that promote lasting meanings or constitutional doctrines. It is important to remember, as we study individual areas of law, that doctrines are created, modified or disavowed concurrently. We cannot forget as we study the powers of the President the boundaries of legislative power or vice versa. Nor can we forget that there can be multiple interpretations of Supreme Court decisions, doctrines, and motives. We must also be cognizant that the interpretations in one area of law or one time period may combine or interact in unforeseen ways creating a change in the system unintended or unforeseen by the justices or litigants.

Even with this modest goal, this course is not to be taken lightly. The course is based mostly on Supreme Court case law. This is not easy reading; the justices write in formal and difficult prose, especially in cases dating back to the 19th Century. Students will be expected to analyze and break down the arguments presented by the justices--cursory reading is not sufficient. The online format requires that all students participate in vigorous discussion of the cases and readings. Our supplemental reading and discussions will tackle academic as well as current debates. Please be forewarned. In other words, this is not a course suggested for students without any background in American government or for students who, for whatever reason, cannot consistently attend to the readings and the class in general. Classes conducted over the worldwide web are sometimes perceived as easily ignored. Inattention to this course will be clearly reflected in your grade.

In terms of the overall material and general preparation for law school, this is an undergraduate political science course. However, in this course you will be introduced to the methodologies of opinion reading and writing and jurisprudential philosophies. You will read case excerpts, rather than full opinions; however, this initial foray into the realm of case law will help prepare you for the rigors of reading full cases during your continued legal education. Additionally, you will be introduced to some of the icons of constitutional law and many of the landmark cases that are the cornerstone of our legal system.
Advisories:

I am required to advise students of certain policies:

1. Plagiarism: This concept causes many students confusion, so I will try and put it plainly. Academic work must be your own work. It is plagiarism to claim work (such as writing, exams, or presentations) done by anyone other than the author named. Plagiarism also includes cutting and pasting information from internet websites without attribution or paraphrasing someone else’s ideas or writing without attribution. It is not sufficient to re-arrange or re-state someone else’s writing or ideas. Plagiarism unacceptable. Any plagiarized writing or work turned in for this course will result in a course grade of "F."

2. Disrespectful behavior: In the university we are all students, seeking truth and understanding. Skin color, gender, age, or other characteristics over which individuals have no choice are irrelevant to that pursuit, as are religious preference or sexual orientation. Additionally, students often have differing viewpoints or positions on issues of the day, and this pluralism is a boon to our classroom not a detriment. Students will be expected to treat all others with the same respect, as they would want afforded themselves. Disrespectful behavior to others in the course is unacceptable and can result in a course grade of "F."

3. Disabilities: "Accommodations are collaborative efforts between students, faculty and Disability Access Services (DAS). Students with accommodations approved through DAS are responsible for contacting the faculty member in charge of the course prior to or during the first week of the term to discuss accommodations. Students who believe they are eligible for accommodations but who have not yet obtained approval through DAS should contact DAS immediately at 737-4098."

4. Link to Statement of Expectations for Student Conduct, i.e., cheating policies
http://oregonstate.edu/admin/stucon/achon.htm

Required Texts:


Learning Outcomes:
1. Examine historical and recent trends and jurisprudence dealing with government powers and constraints.
2. Understand the role of the law and precedents as they affect the role and place in society.
3. Evaluate data and evidence regarding the influence of the law on the continued struggle over power within our government.
4. Analyze legal arguments for their consistency, logic, and consequences.
5. Apply skills learned through readings and discussion to current issues and legal problems in the field.
6. Synthesize the scholarly reading with the case law to generalize the past and current subtleties in the changing circumstances before the law.
7. Articulate legal arguments in writing.

Course Requirements:

Participation:

**Participation is required.** We will utilize several different types of discussion boards and assignments throughout our short term. Assignments and discussion will be geared toward assessing and improving your understanding of the material. Therefore, participation is critical. Students will be asked to identify and discuss cases assigned. Students must be prepared to answer key questions about each major case we tackle. To aid your performance in this course, it is recommended that students brief at least the landmark or major cases excerpted in each section. The ability to dissect a court opinion and distill the key bits of information, even from an excerpt, can be difficult without careful consideration of the readings. In other words, simply logging in and commenting once a week will be insufficient to merit a passing grade for this portion of the course. You are expected to engage and deliberate on the discussion boards on a regular and consistent basis.

You will also notice that during the first week, your readings include the copy of our Constitution located in the appendices of your text. This is not suggested reading. You should make sure that you are very familiar with the actual wording of this text as it stands at the center of all constitutional law.

Reading:

All reading assignments are required. In the textbook, there are a number of cases that are excerpted. Additionally, by purchasing a **new** text you have access to the case archives at [http://clca.cqpress.com](http://clca.cqpress.com). The cases assigned from the archive will be listed by their case name and placed in italics. These are also required reading; purchase of a used text does not obviate these assignments. All reading material should be read prior to the start of each topic. Be prepared to ask and to answer questions and to discuss the issues presented in the readings. ALL reading assignments, regardless of whether they are discussed in class, are fair game for examination questions.
Exams:
There will be weekly exams in this course. The exams will consist of essay questions that require you to analyze and synthesize the material as well as hypothetical questions that require you to apply the material covered.

Reaction paper:
At the end of the course, we will read a short scholarly discussion by a prominent constitutional scholar. In this piece, Gordon Silverstein (Berkeley) suggests that the current imbalance of power between the executive and legislative branches is less Madison’s fault than many others suggest. You will write a short reaction paper to this piece and we will take some time during our last week of the course to have a discussion about the paper and your reactions. (For more information on this assignment, navigate to the assignments page of the course.)

Grading:

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<tr>
<th>Assignment</th>
<th>Weight</th>
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<tr>
<td>Unit exams:</td>
<td>60% (units 1, 2 and 3 = 5%; units 4, 5 and 6 = 15%)</td>
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<tr>
<td>Class participation:</td>
<td>25%</td>
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<tr>
<td>Reaction paper:</td>
<td>15%</td>
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Make-up Assignments:

ALL students are expected to take exams at the scheduled times. Makeup will be allowed only under EXCEPTIONAL circumstances and with PRIOR consent of the instructor. Exceptional circumstances will require documentation of that circumstance. Makeup exams will be essay exams without the benefit of choice among questions.

Contacting me:

Even though this is an online class, I will hold regular office hours. However, I will be checking in on the course more frequently than my office hours. We also have a general discussion board that provides a forum for asking logistical questions about the course. Most of the time, I will check in during the regular workweek and during regular working hours.

Course Outline and Reading Assignments

<table>
<thead>
<tr>
<th>TOPIC</th>
<th>WEEK</th>
<th>READING</th>
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<tbody>
<tr>
<td>Introduction: Politics of the Supreme Court</td>
<td>One</td>
<td>EW: pp. 3-48; 675-686</td>
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<td>The Judiciary</td>
<td>One &amp; Two</td>
<td>EW: pp. 51-118</td>
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<td></td>
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<td>Cohens v. VA (1821)</td>
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<td>Luther v. Borden (1849)</td>
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<td>Colegrove v. Green (1946)</td>
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| **The Executive** | Three and Four | EW: pp. 180-251; 273-321  
*U.S. v. Belmont* (1937) |
|-------------------|----------------|-----------------------------------|
| **The Legislature** | Five and Six | EW: pp. 119-179; 252-273  
*J.W. Hampton & Co. v. United States* (1928) |
| Federalism | Seven | EW: pp. 330-399 |
| **Commerce Clause** | Eight | EW: pp. 400-491  
*South Carolina v. Barnwell Bros.* (1938)  
*Gonzalez v. Raich* (2005) |
| Discussion of "Madison’s Mistakes?" | Eight & Finals week  
Reaction paper due. | EW: pp. 585-640; 518-530  
Silverstein |