

BASIC COURSE INFORMATION

OVERALL COURSE APPROACH

This course provides an introduction to some of the major theoretical and practical issues in American constitutional law and politics. In particular, the course will focus on the role of the Supreme Court in the American political and legal process.

The class is conducted “modified law school” style; sessions will mainly involve a class discussion of questions based on assigned materials. At times I will lecture; student volunteers may play the roles of advocates or judges from time to time.

You are expected to do the assigned reading for each session and come to class prepared to engage in a lively discussion. Although I will not call on unwilling students, you will get more out of the course – and class will go better – if you do volunteer to answer questions, discuss key issues, or participate in simulations. We will have FUN!

READINGS AND SYLLABI

The text for the class is O'Brien, Constitutional Law and Politics, Volume One (Sixth Ed. 2005 W. W. Norton & Co., Ltd.)¹

You will also be assigned to read (1) past exam questions we will use as hypothetical problems throughout the course and (2) case excerpts for use in the last three course weeks. These readings will be available free from an online class webpage.²

¹Members of previous classes have asked whether the Sixth Edition has changed much from the previous (Fifth) edition of O'Brien, which may be available in used editions. The answer to this question is No; for the portions we'll use in P Sc 104A, there are not significant changes. To the question of whether class members will be able to use the Fifth Edition, the answer is “Yes – IF they can find a way to cross-compare the two editions, read a few additional paragraphs and inserts new to the Sixth Edition, AND cross-correlate the two editions to account for the different page breaks for most of the assigned pages.” My teaching method uses frequent in-class references to particular passages from the readings – and my organizational skills are not honed enough to consistently accompany my Sixth Edition references with “Fifth Edition equivalents”.

Bottom line: If you can afford it, you will find it easier to work with the Sixth Edition; if you have to, however, you can with some heightened annoyance use the Fifth Edition.

²The class webpage is accessible through my California Western School of Law WebPage as follows: (1) Visit the School Website (“www.cwsl.edu”). (2) Click on “FACULTY” (in big red

Please bring the appropriate text(s) to each class.

There are two Assignment Syllabi for this course. The first Syllabus, distributed in class the first day, covers Phases I and II.A of the course; it provides assignments through the Midterm. A second Assignment Syllabus, covering subsequent assignments, will be distributed separately.

EXAMINATIONS

There will be an in-class midterm during a portion (lasting between one-and-a half hours and two hours) of the class on Wednesday, February 21st. (The midterm will be the only class-related activity that day.) As noted earlier, the midterm will cover materials assigned on the first syllabus.

You will also take a final examination during the designated exam period for the course: Monday, March 19th, 7 to 10 PM. NOTE that the final exam will not take the entire designated three hour period. You will have between two and two-and-a-half hours to take it; the exact time frame will be announced before the last class day.

IMPORTANT: In the last several years, students have ended up cross-scheduled to take two final exams at the same time. PLEASE LOOK AT YOUR EXAM SCHEDULE IMMEDIATELY, and call any conflicts to my attention as soon as possible.

Both examinations will pose essay and short answer questions, in the format illustrated through past exam questions contained in the Reader. Both exams will be open book / open note. The midterm is worth 40% of total course points; the final is worth 60%.

Except for the "thematic position argumentation" part of the final (Part II), the final exam will cover only materials studied since the midterm (i.e. not be cumulative). More details on examination coverage and format will be provided via separate handouts, elaborated on through an in-class announcements.

MY AVAILABILITY

***For UCSD office hours during class instruction weeks:

- Wednesdays, 11:45 A.M. to 1:30 P.M. (Espresso Roma Café, UCSD Price Center)
- Wednesdays, 2:30 to 4:30 P.M. (Social Science Bldg (SSB), Room 363)

[NOTE: Because I am not teaching at California Western Law School this quarter, I do not have office hours there...]

***I am available at other times by mutually convenient prior arrangement.

letters on left of site). (3) On the alphabetical list, click on "Glenn C. Smith". (4) Click on "Class WebPages" (to right of page). (5) Click on "Political Science 104A"

***For law-school-planning questions: Past experience indicates that a portion of the students who take this course are planning to attend law school after graduation. As a full-time law professor guest-teaching this course, I believe I should try to be useful to such students by providing general counseling about law school and legal careers and arranging visits to law school classes taught by others at my home institution. (Please note that I am not recruiting students to law school in general—it is not for everyone—or to my law school in particular. In fairness, I simply wish to make sure all potentially interested students know of my policy on this...)

**For recommendation letters for law school, graduate study, UCSD internships, foreign study, and other related opportunities: I am willing to write letters of recommendation for students whose overall GPA and grade(s) in my course(s) makes this appropriate.

***For exchange of information about the best cappuccino places in San Diego: Any time!

Please do not hesitate to contact me if I can be of any assistance to you!

FIRST SYLLABUS (FOR PHASES I and IIA)

(Assignments to be covered before, and tested on, February 21st midterm)

[All references to "O'Brien" are to the SIXTH Edition (2005) of the required text, O'Brien, Constitutional Law and Politics, Volume One (W. W. Norton & Co., Ltd. References to "Smith" are to handouts and case excerpts accessible from the Class WebPage.¹

I. THE POWER AND ROLE OF THE FEDERAL JUDICIARY -- AND THE SUPREME COURT IN PARTICULAR -- IN THE CONSTITUTIONAL SYSTEM . .

[NOTE: Especially if this is the first course in which you are reading and analyzing judicial opinions, you will gain useful guidance from O'Brien, pp. 1035-1038 ("The How, Why, and What to Briefing and Citing Course Cases")]

A. The Procedures and Dynamics of Supreme Court Decision-Making: An Overview

[▼▼▼ SUMMARIZED IN CLASS 1/10; READ BEFORE THE MIDTERM ▼▼▼]

1. How Cases Reach, and Are Decided by, the Court

O'Brien, pp. 103-105; (Figure 2.1 on p. 106); 170-172; 175-186

[▼▼▼ READING ASSIGNMENT FOR 1/17 ▼▼▼]

2. Different Approaches to Constitutional Interpretation: Their Strengths and Limits

O'Brien, pp. 67-98

B. The Power of Judicial Review: Its Justification and Continually Controversial Natures in a Majoritarian Democratic System

[▼▼▼ READ ALSO FOR 1/17; TO BE DISCUSSED SOME OF 1/24 AS WELL]

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1. Establishing and Contesting the Judicial Review Power: An Overview of Major Issues and Disputes

O'Brien, pp. 23-38; 173-175 ("In Comparative Perspective: The 'European Model' of Constitutional Courts and Judicial Review");

[▼▼▼ ADDITIONAL READING ASSIGNMENT FOR 1/24 ▼▼▼]

2. How is Judicial Review Justified in a Constitutional Democracy? Chief Justice Marshall's *Marbury v. Madison* Rationale vs. Alternative Justifications

O'Brien, pp. 46-59 (supplemented by materials introduced during class discussion)

[▼▼▼ READING ASSIGNMENT FOR 1/31 ▼▼▼]

C. The Implications of Judicial Review

1. The Impact on Other Governmental Entities: Do They Still Retain An Independent Constitutional Decision-Making Role?

O'Brien, pp. 186-198; 518-522; 59-67; 770-774

2. The Impact on The Judiciary Itself: Judicial Restraint Doctrines Reflecting Continued Ambivalence about the Legitimacy of Judicial Review

O'Brien, pp. 105 & 107 ("Adverseness and Advisory Opinions"); pp. 116-118 ("Ripeness and Mootness") & 120-122 ("Standing and the Connecticut Birth Control Cases")

[▼▼▼ READING ASSIGNMENT FOR 2/7 ▼▼▼]

O'Brien, pp. 119 & 122-124 ("Political Questions"); 145-161; 511-515; 169

[▼▼▼ PARTIAL READING ASSIGNMENT FOR 2/14 ▼▼▼]

II. **THE CONSTITUTION AND THE ALLOCATION OF POWERS BETWEEN FEDERAL AND STATE GOVERNMENTS**

- A. Defining and Limiting the Federal Government's Enumerated Powers: The "Classic View" of Chief Justice Marshall in *McCulloch v. Maryland*

O'Brien, pp. 516-520 (except for materials on constitutional amendments); 522-535

Winter 2007 -- **POLITICAL SCIENCE 104A**
The Supreme Court and the Constitution
Visiting Professor Glenn Smith

SECOND SYLLABUS (FOR PHASES II AND III)

[References to "O'Brien" are to the SIXTH Edition (2005) of the required text, O'Brien, Constitutional Law and Politics, Volume One (W. W. Norton & Co., Ltd. References to "Smith" are to sets of major case excerpts accessible from the Class WebPage.¹

**II. THE CONSTITUTION AND THE ALLOCATION OF POWERS BETWEEN
FEDERAL AND STATE GOVERNMENTS**

[PREVIOUSLY ANNOUNCED READING ASSIGNMENT FOR 2/14:]

- A. Defining and Limiting the Federal Government's Enumerated Powers: The "Classic View" of Chief Justice Marshall in *McCulloch v. Maryland*

O'Brien, pp. 516-520 (except for materials on constitutional amendments);
522-535

*[ADDITIONAL READING ASSIGNMENT FOR 2/14; NOTE, however, that this material will
not be covered on the 2/21 Midterm:]*

- B. A Case Study in Application of the "Classic View" of Federal Power: The
Evolving Standards for Defining and Limiting (??) Congress' Power over
Interstate Commerce

1. Early Supreme Court Approaches to the Commerce Power:
Formalistic and Pragmatic Approaches Coexisting

O'Brien, pp. 544-555

2. Expansion of Federal Commerce Power During and After the New
Deal: The Reign of Pragmatism

O'Brien, pp. 559-571; 576-588

[NO READING ASSIGNMENT for 2/21; IN-CLASS MIDTERM]

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accessing the Class WebPage: The class webpage is accessible through my California
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Science 104A"

[READING ASSIGNMENT for 2/28:]

3. The New Formalistic Limits of *United States v. Lopez*: How Significantly Do They Limit Federal Commerce Power?

O'Brien, pp. 588-601; 616-628

- C. Another Case Study in Defining and Limiting Federal Government Powers: Evolving Case Law on Federal Taxing and Spending Powers

O'Brien, pp. 629-632; 638-641

- D. Federalism-Based Limits on Federal Power to Regulate State & Local Government Directly: The Rise, Fall, and Rise of the Constitution as a Restraint

O'Brien, pp. 689-700

Brief lecture on *Garcia v. San Antonio Metropolitan Transit Authority*

O'Brien, pp. 714-726 (ending with majority opinion in *Printz & Mack*)

III. THE CONSTITUTION AND EQUAL PROTECTION OF THE LAWS

[READING ASSIGNMENT for 3/7:]

- A. Defining "Equality" in Voting Rights: An Overview and Examples of Difficult Line-Drawing

O'Brien, pp. 842-848; 823-831

- B. "Equal Protection" As a Right Against Governmental Discrimination: "Strict Scrutiny" for Race-Based Classifications

1. Strict Scrutiny for Race-Based Classifications Disadvantaging Minorities: An Overview

Brief in-class lecture; no reading assignment

2. Strict Scrutiny for "Benign" Race-Based Classifications: Continuing Controversy over Affirmative Action

Smith, "Excerpt Set #1" (major excerpts from *Richmond v. J.A. Croson*; posted on Class WebPage)

[READING ASSIGNMENT FOR 3/14:]

Smith, "Excerpt Set #2" (major excerpts from University of Michigan affirmative-actions cases *Grutter & Gratz*; posted on Class WebPage)