Course Description (from Undergraduate Catalog):

A study through the use of court cases of the allocation of governmental powers with emphasis on the national government, and an introduction to the judicial function and the American legal system.

Course Overview and Objectives:

This course focuses on constitutional law concerning the structure of governmental institutions and their powers, from both a legal and nonlegal perspective. We will utilize a case book approach commonly used in a constitutional law class in law school, although we will make use of additional readings as well. This portion of the class will use the Socratic Method. In addition to learning about constitutional law in general, this approach is designed to expose students to judicial cases in order to understand the legal analyses employed by the Supreme Court within different political contexts.

Texts:


Grading:
The final course grade is based entirely upon performance on the exams and case brief as stated below:

   Student’s highest exam grade: 25%
   Student’s next-highest exam grade: 25%
   Student’s lowest exam grade: 20%
   Socratic Method/Class Participation: 20%
   Case Brief: 10%
**Policies:**

The student who chooses not to attend class does so at their own peril. While attendance will not be formally recorded, your grade will most certainly drop if you do not attend. If you are not in attendance when I call on you in class, you will receive a zero for the day. This will be explained in depth in class.

Information for the students will be communicated in two ways. 1. In class; 2. Through email. The only email address I will use to contact you is your official “utep.edu” account. This means as a requirement of this course you will need to regularly check this account if you do not already. “I did not receive notification,” is not a valid excuse.

For this class I will be banning laptops in the classroom. Recent studies have shown that students who use laptops in the classroom have lower grades (on average) than their peers who do not. While laptops can facilitate good note taking, I have found their use, not unlike cell phones, to be distracting to the student using them. Furthermore, computers can also prove distracting to other students.

**Grading Scale:**
The following numerical averages translate into final course grades:

<table>
<thead>
<tr>
<th>Numerical Average</th>
<th>Grade</th>
<th>GPA</th>
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<tbody>
<tr>
<td>90</td>
<td>A</td>
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<tr>
<td>80-89</td>
<td>B</td>
<td>3.0</td>
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<tr>
<td>70-79</td>
<td>C</td>
<td>2.0</td>
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<tr>
<td>60-69</td>
<td>D</td>
<td>1.0</td>
</tr>
<tr>
<td>60</td>
<td>F</td>
<td>0.0</td>
</tr>
</tbody>
</table>

**Exams:**
The three exams will consist of 15 multiple choice questions (worth 30% of the exam) and two of three LONG essays (worth 70% of the exam). The essays will involve large themes covered in class and will be apparent if you are in attendance and pay attention. Much of the material on the exams is delivered in class; however, some material from the readings not covered in class is tested on the exams as well. YOU MUST BRING A BLUE BOOK TO EACH EXAM OR I WILL NOT ALLOW YOU TO TAKE IT.

- Test 1: September 30 (during class)
- Test 2: November 4 (during class)
- Test 3: December 9, 4:00 – 6:45pm (final exam week)

**Make-Up Exams:**

It is completely the student’s responsibility to take the exams when they are scheduled. As a general rule, make-up exams will not be allowed; thus, a missed exam counts as a zero (0) toward the final course grade. Notwithstanding, at the instructor’s sole discretion make-ups will be permitted, but only the gravest of reasons will be accepted, if documented in writing by the proper authority. Even if there is an acceptable reason for missing the regularly scheduled exam,
permission to take a make-up will be granted only if the student provides the professor with prompt and proper notification; that is, the student must inform the professor of the reason for missing the exam with proper documentation before the exam takes place, and the reason must be acceptable to the instructor. If a make-up is permitted, both the format and questions can, and likely will, be different from the regularly scheduled exam.

**Academic Honesty and Integrity:**

Per UTEP policy: The University of Texas at El Paso prides itself on its standards of academic excellence. In all matters of intellectual pursuit, UTEP faculty and students must strive to achieve excellence based on the quality of work produced by the individual. In the classroom and in all other academic activities, students are expected to uphold the highest standards of academic integrity. Any form of scholastic dishonesty is an affront to the pursuit of knowledge and jeopardizes the quality of the degree awarded to all graduates of UTEP. It is imperative, therefore, that the members of this academic community understand the regulations pertaining to academic integrity and that all faculty insist on adherence to these standards.

Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, and any act designed to give unfair advantage to a student or the attempt to commit such acts. Proven violations of the detailed regulations, as printed in the Handbook of Operating Procedures (HOP) and available in the Office of the Dean of Students and the homepage of The Dean of Students at www.utep.edu/dos, may result in sanctions ranging from disciplinary probation, to failing a grade on the work in question, to a failing grade in the course, to suspension or dismissal, among others.

**Special Needs:**

If you have a disability and need classroom accommodations, please contact The Center for Accommodations and Support Services (CASS) at 747-5148, or by email to cass@utep.edu, or visit their office located in UTEP Union East, Room 106. For additional information, please visit the CASS website at www.sa.utep.edu/cass. CASS’ Staff are the only individuals who can validate and if need be, authorize accommodations for students with disabilities.

**Case Briefs:**

Each student is responsible for writing 1 case brief. When your case is discussed in class, you must answer questions about the case you have briefed (and this will also count for class participation). Case briefs not submitted in a timely manner and not discussed in class will be assigned a grade of zero (which will count double considering the discussion will be graded twice). A list of cases available for briefing, instructions and requirements for the briefs, due dates, and a sample case brief, follow this Syllabus.
University Writing Center:

The University Writing Center is a useful tool each of you should take advantage of in the course of writing this paper. While I do not require you to go, I can say definitively that your paper will be improved following a consultation with the staff. The staff sees students through appointments or walk-ins, though appointments are preferred. For more information and the registration form go http://academics.utep.edu/Default.aspx?tabid=47508

Class Schedule:
We meet every Tuesday and Thursday from 4:30-5:50pm during the semester, with the exception of the following dates during which class is cancelled:

August 28, American Political Science Assoc. Conference
October 2, Wedding, Bend, Oregon
November 27, Thanksgiving

Schedule of Assignments:

All references are to the Fisher casebook, unless provided otherwise. A case or reading denoted by *signifies that it is not found in any of the assigned books, and alternate references are supplied; a reading denoted by ** signifies that it can be found on my website.

I. Judicial Review and the Role of the Supreme Court (August 26 – Sept 25)

The Constitution of the United States of America, pp. 1083
Constitutional Politics, pp. 3-5
Judge as Lawmaker, pp. 18-19
Independent State Action, pp. 21-22
Who Has the “Last Word”?, pp. 22-24
Who Shall Interpret?, pp. 29-31
Decision Making: Process and Strategy, p. 142
Jurisdiction: Original and Appellate, pp. 142-143
Writ of Certiorari, pp. 143-147
From Oral Argument to Decision, pp. 147-154
Unanimity and Dissent, pp. 155-159
Douglas, The Dissent: A Safeguard of Democracy, pp. 159-160
Jackson: The Limitation of Dissent, pp. 160-161
Caseload Burdens, pp. 161-163
Threshold Requirements, p. 75
Cases and Controversies, pp. 75-79
Standing to Sue, pp. 81-85
Mootness, pp. 94-96
Ripeness, pp. 97-99
Political Questions, pp. 101-104
The Doctrine of Judicial Review, p. 33
Sources of Judicial Review Authority, pp. 33-36
Framers’ Intent, pp. 36-38
Federalist No. 78, p. 38-39
*Chisholm v. Georgia, 2 U.S. 419 (1793)
Calder v. Bull (1798), pp. 402
The Road to Marbury, pp. 39-44
Marbury v. Madison (1803), pp. 44
*The Judiciary Act of 1789, 1 Statutes at Large 73,
http://www.constitution.org/uslaw/judiciary_1789.htm
Ex Parte McCarrde (1869), pp. 1067
Fletcher v. Peck (1810), pp. 404-405
Martin v. Hunter’s Lessee (1816), pp. 49
Cohens v. Virginia (1821), pp. 52
Constraints on Judicial Review, pp. 54-57
Eakin v. Raub (Pa. 1825) – Gibson’s Dissent, pp. 58
Rafferty, Bill. (Gavel to Gavel, January 4, 2012): “New Hampshire: Constitutional amendment would prohibit all judicial review of legislation”
Presidential Elections, 969-979
The Boundaries of Judicial Review: Interview with Justice Powell, pp. 60-61
Ashwander v. TVA (The “Brandeis Rules”) – Justice Brandeis’ Concurrence, p. 79-80
Methods of Constitutional Interpretation, pp. 61-68
The Doctrine of Original Intent: Attorney General Meese vs. Justice Brennan, pp. 68-70
Exam 1 September 30

II. Separation of Powers (October 7 – October 30)

Separation of Powers Doctrine, pp. 165-169
Presidential Signing Statements, pp. 171-173
adison’s Analysis of the Separation Doctrine (Federalist No. 47, 48, and 51), pp. 173-175

A. Foreign Affairs
Presidential Power; Prerogative, pp. 175
Separation of Powers: Emergencies and Foreign Affairs, p. 253-256
United States v. Curtiss-Wright Corp. (1936), pp. 256
Iran-Contra Report (1987), pp. 258-259
Haig v. Agee (1981), pp. 259
Executive Prerogative? pp. 262-265
The Prize Cases (1863), pp. 265
Ex Parte Milligan (1866), pp. 268
Korematsu v. United States (1944), pp. 269
Griswold, “How Sensitive Were the Pentagon Papers’,” pp. 276-277
http://www.nytimes.com/2011/01/04/opinion/04stone.html?_r=0
War Power, pp. 286-295
*Gulf of Tonkin Resolution, H.J. RES 1145 (1964)
War Powers Resolution, pp. 303-305
Campbell v. Clinton (DC Cir., 2000), pp. 307
Hamdi v. Rumsfeld (2004), pp. 296
Hamdan v. Rumsfeld (2006), pp. 298
**Todd A. Curry “The Adjudication of Presidential Power in the U.S. Supreme Court.”
Conclusions, p. 306

B. Domestic Affairs
Youngstown Co. v. Sawyer (1952), pp. 271
Dames and Moore v. Regan (1981), pp. 283
Creating the Executive Departments, pp. 178-182
Morrison v. Olson (1988), pp. 186
Congressional Oversight, pp. 213-217
Fisher, “Legislative Vetoes After Chadha,” pp. 223-225
Investigations and Executive Privilege, pp. 225-231
Watkins v. United States (1957), pp. 231
Barenblatt v. United States (1959), pp. 233
Political Questions, pp. 101-104
Conclusions, p. 249

Exam 2 – November 4

III. Federalism (November 6-11)

Federal-State Relations, p. 313
Principle of Federalism, pp. 313-319
McCulloch v. Maryland (1819), 319
Missouri v. Holland (1920), pp. 323
Commerce Clause, pp. 324-328
Gibbons v. Ogden (1824), pp. 328
*Willson v. Black Bird Creek Marsh Company, 27 U.S. 245 (1829)
Cooley v. Board of Wardens (1852), pp. 326
*South Carolina Highway Dept. v. Barnwell Bros., 303 U.S. 177 (1938)
Nationalization of the Economy, pp. 331-333
*U.S. v. E.C. Knight Co., 156 U.S. 1 (1895)
The The Lottery Case (Champion v. Ames) (1903), pp. 333
*Shreveport Rate Case (Houston, E.&W.T.R. Co v. U.S.), 234 U.S. 342 (1914)
*Stockyards Case (Stafford v. Wallace), 258 U.S. 495 (1922)
http://supreme.justia.com/cases/federal/us/258/495/case.html
Hammer v. Dagenhart (1918), pp. 335
The New Deal Watershed, pp. 337-340
*Schechter Corp. v. United States (1935), pp. 211
Court Packing, pp. 1054-1059
NLRB v. Jones & Laughlin (1937), pp. 342
United States v. Darby (1941), pp. 345
Wickard v. Filburn (1942), pp. 346
Civil Rights Cases (1883), pp. 782
Heart of Atlanta Motel v. U.S. (1964), pp. 817
*Katzenbach v. McClung, 379 U.S. 294 (1964)
From National League to Garcia, p. 349-350
National League of Cities v. Usery (1976), pp. 350
Garcia v. San Antonio Metropolitan Transit Authority (1985), pp. 352
State Powers Revived, pp. 354-359
*Printz v. United States, 521 U.S. 98 (1997)
Gonzales v. Raich (2005), pp. 365
Gonzales v. Oregon (2006), 546 U.S. 243
The Spending and Taxing Powers, pp. 367-370
*Pollock v. Farmers’ Loan & Trust Co., 157 U.S. 429 (1895),
*U.S. v. Butler, 297 U.S. 1 (1936),
Steward Machine Co. v. Davis (1937), pp. 371
South Dakota v. Dole (1987), pp. 373
Conclusions, p. 393
Case Brief Information

As mentioned earlier, each student is responsible to brief a case during the semester. The assignment in its entirety entails writing said brief, turning it in on the day the case is discussed, and leading the discussion of the case, as well as answering questions based upon the brief. Do NOT use any additional sources for your case brief. All the information you need is in the Fisher case book. I have included a sample brief at the end of this document and that format should be adopted without modification. You case brief is due in class when it is discussed. Since this class is fluid, I cannot put a hard date on when it is due. The only way to know is to come to class daily and rely upon friends in the course.

You will have until Wednesday the 16th of January to email me your top three choices for cases to brief. You may choose no more than one case from any section. I will then assign the cases formally. If you do not email me preferences I will assign you a case. It will be unchangeable.

Cases:

Judicial Review and the Role of the Supreme Court

Ex Parte McCordle (1869)
Fletcher v. Peck (1810)
Martin v. Hunter’s Lessee (1816)
Cohens v. Virginia (1821)

Separations of Power

United States v. Curtiss-Wright Corp. (1936)
The Prize Cases (1863)
Ex Parte Milligan (1866)
Korematsu v. United States (1944)
New York Times Co. v. United States (1971)
Campbell v. Clinton (DC Cir.. 2000)
Youngstown Co. v. Sawyer (1952)
Dames and Moore v. Regan (1981)
Morrison v. Olson (1988)
INS v. Chadha (1983)
Watkins v. United States (1957)
Barenblatt v. United States (1959)
Federalism

*McCulloch v. Maryland* (1819)
*Missouri v. Holland* (1920)
*Gibbons v. Ogden* (1824)
*Cooley v. Board of Wardens* (1852)

National Power – Commerce, Taxing, and Spending

*The Lottery Case (Champion v. Ames)* (1903)
*Hammer v. Dagenhart* (1918)
*Schechter Corp. v. U.S.* (1935)
*Carter v. Carter Coal Co.* (1936)
*NLRB v. Jones & Laughlin* (1937)
*U.S. v. Darby* (1941)
*Wickard v. Filburn* (1942)
*Civil Rights Cases* (1883)
*Heart of Atlanta Motel v. U.S.* (1964)
*National League of Cities v. Usery* (1976)
*Garcia v. San Antonio Metropolitan Transit Authority* (1985)
*Gonzales v. Raich* (2005)
*Gonzales v. Oregon* (2006)
*Steward Machine Co. v. Davis* (1937)
*South Dakota v. Dole* (1987)
**Marbury v. Madison**  
5 U.S. 137 (1803)  
CJ Marshall, majority opinion

**Facts:** President Adams, following an electoral loss, appointed Marbury, among other, to a federal judicial post called the DC Justice of the Peace. The appointments were approved by the lame duck Senate, signed by the President, sealed, but failed to be delivered, which was the duty of then Sec. of State, John Marshall. After taking office and being sworn in, President Jefferson refused to deliver the appointments. Marbury, whom was denied his appointment, filed suit in the Supreme Court of the United States requesting a writ of mandamus, which would order President Jefferson to deliver the appointments.

**Issues:** Is Marbury entitled to his appointment? If Marbury is entitled to his post, is there a legal remedy available? If so, is a writ of mandamus from the Supreme Court proper?

**Holding:** Yes. Yes. No.

**Rationale:** The judicial office Marbury seeks was correctly appointed, approved, signed and sealed. The neglect of its delivery is simple a ministerial failure, and should not prevent Marbury from his appointment which was conducted as required by law. Furthermore, Marbury does have a legal means to secure his appointment by law, and that is a writ of mandamus. However, the act which gave the Supreme Court the authority to issue writs of mandamus with original jurisdiction (The Judiciary Act of 1789) runs afoul of the US Constitution. The Constitution spells out specifically in what types of case the Supreme Court has original jurisdiction in, and to augment this list, the Constitution would have to be amended. Therefore, Marshall develops a syllogism: 1) The Constitution is the supreme law of the land, 2) § 13 of the Judiciary Act contradicts the Constitution, 3) Thus, § 13 is unconstitutional. Therefore, the method by which Marbury attempted to use is ruled null and void. The important portion of this decision does not concern Marbury and his appointment, but instead that the Supreme Court asserted their power to engage in judicial review over the other branches of government.

**Other Opinions:** None

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