Course Description

This course is an introduction to basic issues and principles that have provided the institutional structure for the American republic since 1789. This course includes an examination of the political and philosophical values which guided the framers of the Constitution and which are embodied in its provisions. The class will also seek to understand the symbolic power that has accrued to the Constitution and the role this power has played in efforts to resolve political conflicts within the American polity. The course endeavors to do this both through a review of the fundamental legal and political features of the judicial process and through a substantive examination of several key areas of constitutional doctrine. The specific areas of concern in this course include: (1) The nature of judicial review and judicial power, (2) Federalism with particular concern for implications of the Tenth and Eleventh Amendments regulation, (3) Property rights under the federal constitution and (4) Voting rights and electoral politics and (5) The separation of powers and the powers of the President and Congress.

Attendance

Students are expected to attend all classes. Absences due to participation in legitimate Moravian College extracurricular activities, a doctor's excuse or notification by the Dean of Students Office will allow a student to be excused from class. All other excuses are subject to the instructor's discretion.

Required Books


Evaluation of the Students Work

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Final Exam

The final exam will consist of 100 statements referring to cases read for the course. Students will be required to identify the case to which the statement refers. A list of cases will be provided to students in advance of the final.

Quizzes

There will be six unannounced multiple choice quizzes in class. These quizzes will be worth 5 points each and will focus on the reading assignments for the day on which the quiz will be given. Make up quizzes will be permitted with a doctor's excuse for a missed class.

Case Briefs

Each student will outline or “brief” three cases. The student may choose any three of the cases listed below and submit the brief by the date indicated for the case in question. To facilitate successful completion of this assignment, students will have the opportunity to revise the first brief that they submit. These briefs should be formatted according to the outline provided in the O’Brien text on pp. 1035 and 1036 and are due on the dates listed below.

Baker v Carr (9/20)
Gibbons v Ogden (9/22)
NLRB v Jones & Laughlin (10/4)
Heart of Atlanta Motel v United States (10/6)
City of Boerne v Flores (10/18)
Wesberry v Sanders (11/3)

Hypothetical Case Analysis

Each student will write a 6-10 page analysis of a hypothetical case. The "hypotheticals" will consist of a set of facts raising constitutional questions about an area of concern in the course. Specifically, the topics about which students will be asked to write and the due date for each topic are listed below:

- Federalism and commerce powers 10/25
- The problem of apportionment 11/10
- Presidential war powers 11/29

An equal number of students will be assigned to each topic. There will be an attempt to honor student preferences regarding the topics but there are no guarantees that students will receive their first choice. To complete this assignment, each student will write an argument indicating how they believe the legal issues are to be resolved based on constitutional doctrine and precedent. The materials in the text will be the most basic source for these briefs, but additional research may be necessary.
Book Review

Each student will write a review of the Thomas Keck’s *The Most Activist Supreme Court in History*. The review is due November 1. The review should be at least five pages typewritten. The review should include the following:

- A statement of Keck’s principal thesis
- A discussion of “conjunction” - the interplay between law and politics as the “cause” of judicial decisions
- A discussion of the evidence that Keck offers to support his thesis and the issue of “conjunction”
- Identification of key divisions within the Rehnquist Court and an explanation of those divisions reflect competing traditions of constitutional jurisprudence.

Class Participation and Instructor Evaluation

Students are expected to participate in class. This includes being prepared to answer questions pertaining to all cases assigned for class reading. Students should be ready to identify the facts of the case, the constitutional provisions applied or interpreted by the Court, the legal questions raised in regard to those provisions, the holding in the case (who wins), and the rationale for the majority opinion. **A RECORD OF CLASS PARTICIPATION IN DISCUSSION OF CASES WILL BE KEPT BY THE INSTRUCTOR. WHILE DISCUSSION WILL FREQUENTLY RELY ON VOLUNTEERS, STUDENTS SHOULD BE PREPARED TO RESPOND WHEN CALLED UPON.**

Course Outline, Reading Assignments and Cases

I The U.S. Constitution: Philosophy and Structure (9/1)
   **Reading:** Federalist 10, 51 and 78

Copies of these texts can be found at:
   www.yale.edu/lawweb/avalon/federal/fed.htm
   lcweb2.loc.gov/const/fed/fedpaper.html

II Judicial Power and Process
   A. Establishing judicial review (9/8)
      **Reading:** O’Brien, pp. 23-40, 46-59, 765-774

Cases for discussion: Marbury v Madison
   Martin v Hunter’s Lessee
   Cooper v Aaron

   B. Judicial power and democratic accountability (9/13 and 9/15)
      **Reading:** O’Brien, pp. 67-96: Keck, pp1-66.

   C. Judicial process, reasoning and the limits of judicial power (9/15 and 9/20)

Cases for discussion: Baker v Carr

III Powers of Congress and National Power

A. Establishing congressional power and the commerce clause (9/22)
Reading: O’Brien, pp. 516-544, 659-664

Cases for discussion: McCulloch v Maryland
    Gibbons v Ogden
    Cooley v Board of Wardens

B. Economic Regulation and the Emerging National Economy: Substantive Due
    Process and the Commerce/Manufacturing Distinction (9/27 and 9/29)
Reading: O’Brien, pp. 980-1006, 544-558

Cases for discussion: The Slaughterhouse Cases
    Munn v Illinois
    Lochner v New York
    United States v E.C. Knight
    Hammer v Dagenhart

C. The commerce power and the nationalization of the economy (10/4)
Reading: O’Brien, pp. 559-579, 1006-1011

Cases for discussion: Muller v Oregon
    NLRB v Jones & Laughlin
    United States v Darby
    Wickard v Filburn
    West Coast Hotel v Parrish

D. Post New Deal applications of the commerce power and congressional power (10/6)
Reading: O’Brien, pp. 579-588, 1012-1014, 638-641

Cases for discussion: Heart of Atlanta Motel v United States
    Katzenbach v McClung
    Lincoln Federal Labor Union v Northwestern Iron and Metal Co.
    South Dakota v Dole

IV The Federal System and Limits on National Power

A. State powers under the commerce clause (10/13)
Reading: O’Brien, pp. 652-688

Cases for discussion: Southern Pacific v Arizona
    Bibb v Navajo Freight
    Maine v Taylor
    Pennsylvania v Nelson
B. Curbing congressional power (10/18-10/20)

**Reading:** O’Brien, pp. 588-628; Keck pp. 107-196

Cases for discussion: United States v Lopez
   Reno v Condon
   City of Boerne v Flores
   United States v Morrison

C. The Tenth and Eleventh Amendments as limits on federal power (10/25-10/27)

**Reading:** O’Brien, pp. 689-758; Keck, pp. 199-253

Cases for discussion: Garcia v San Antonio Metropolitan Transit Authority
   Printz v United States
   Mack v United States
   Seminole Tribe of Florida v Florida
   Alden v Maine
   Nevada Dept of Human Resources v Hibbs

D. The legacy of the Rehnquist Court (11-1)

**Reading:** Keck, 254-296

V Voting rights and elections

A. Voting rights and apportionment (11/3-11/8)

**Reading:** O’Brien, pp. 823-874

Cases for discussion: Gomillion v Lightfoot
   Wesberry v Sanders
   Reynolds v Sims
   Davis v Bandemer
   Shaw v Reno
   Miller v Johnson
   Bush v Vera
   Shaw v Hunt
   Hunt v Cromartie

B. Campaigns and elections (11/8)

**Reading:** O’Brien, pp. 875-946

Cases for discussion: Bush v Gore
   Buckley v Valeo
   FEC v NCPAC
   Democratic Party of the United States v NCPAC
   Colorado Republican Campaign Committee v FEC
   FEC v Colorado Republican Campaign Committee
VI Separation of Powers: Foreign Affairs

A. Inherent powers and Congress (11/10-11/15)
   Reading: O’Brien, pp. 220-239, 310-339

Cases for discussion: United States v Curtiss-Wright
   Youngstown Sheet & Tube v Sawyer
   New York Times v United States
   Dames & Moore v Regan
   Sale v Haitian Centers Council

B. War and emergency powers (11/17-11/22)
   Reading: O’Brien, pp. 254-309

Cases for discussion: The Prize Cases
   Ex parte Milligan
   Korematsu v United States
   Rasul v Bush
   Hamdi v Rumsfeld

C. Treaties and executive agreements (11/24)
   Reading: O’Brien, pp. 239-253, 157-161

Cases for discussion: Missouri v Holland
   United States v Pink
   Goldwater v Carter
   United States v Alvarez-Machain

VII Separation of Powers: Domestic Affairs

A. Appointment and Removal (11/29)
   Reading: O’Brien, pp. 340-386

Cases for discussion: Myers v United States
   Humphrey’s Executor v United States
   Bowsher v Synar
   Morrison v Olson

B. Delegation of authority and congressional oversight (12/1)
   Reading: O’Brien, pp. 387-424

Cases for discussion: Schecter Poultry Corporation v United States
   Industrial Union Department, AFL-CIO v American Petroleum Institute
   Immigration and Naturalization Service v Chadha
   Clinton v City of New York

C. Accountability and immunities (12/6)
   Reading: O’Brien, pp. 425-454

Cases for discussion: United States v Nixon
   Clinton v Jones