

MOREHEAD STATE UNIVERSITY

GOVT 321: CONSTITUTIONAL LAW
105 Rader Hall, 12:40 MWF1

FALL 2005

PROFESSOR WM. GREEN

316 Rader Hall, 783-2128, Office Hours: 9:15-10:15 and 11:30-12:30 MWF1

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CONSTITUTIONAL LAW IN THE 21ST CENTURY

The U.S. Constitution has been an object of veneration and fierce dispute for two hundred years. The most important constitutional disputes have focused on questions of separation of powers and federalism: the meaning of those powers delegated to the national government and those reserved to the states. We will begin with the fundamental question: what is the Supreme Court's power to decide these issues? Then we will turn first to separation of powers questions which have focused on the nature of presidential power, the meaning of the president's privileges, immunities, and power to appoint personnel; and the extent of his diplomatic and war powers. In this regard, we will give particular attention to the president's power to wage the Iraq war and to detain enemy combatants. Secondly, we will consider the concept of American federalism and the nature of national and state power. Then we will turn to federalism questions which have focused on the national power to tax, spend, and regulate commerce and on state powers regulate transportation, agricultural products, drugs, and garbage disposal consistent with the need to maintain a national economic common market. We will also do constitutional law by using constitutional principles and case law to decide hypothetical governmental powers questions which may come before the Court and the country in their third century.

READINGS

The required readings for this course are William Green, *Constitutional Law in the Third Century*, 13th ed. 2005; and the articles and cases marked with an asterisk (*) in the "Assignment" section and available both on electronic reserve at www.morehead-st.edu/units/library and the Blackboard course site: <http://www.morehead-st.edu/units/distance>.

OUTLINE OF ASSIGNMENTS

THE SUPREME COURT AND THE CONSTITUTION

August 24

*Steven Emanuel, "The Supreme Court's Authority," 7-12, and "Political Questions," 713-17 in his *Constitutional Law*, 2004.

*William Green, "Political Questions Doctrine," 723-24, in David Schultz and John R. Vile, *Encyclopedia of Civil Liberties in America*, 2005.

Marbury v. Madison (1803), A.15

PRESIDENTIAL POWER AND THE CONSTITUTION

August 26 – October 10

1. Nature of Presidential Power: Lawmaking and Vetoes

*Steven Emanuel, "Domestic Policy and Separation of Powers: No Right to Make Laws," 112-13, in his *Constitutional Law*, 2004.

Youngstown Sheet and Tube v. Sawyer, D.1

*Emanuel, "President's Veto Power," 113-15, and "The Legislative Veto," 116-18, in his *Constitutional Law*, 2004.

Clinton v. New York (1997), D.12

Chadha v. I.N.S. (1983), D.20

2. Presidential Privileges, Immunities, and Personnel

*Steven Emanuel, "Executive Privilege," 129-32, in his *Constitutional Law*, 2004.

*Louis Fisher, "Executive Privilege," 181-95, in his *Constitutional Conflicts Between the President and Congress*, 1998.

U.S. v. Nixon (1974), E.1

*Louis Fisher, "Presidential Immunity," 175-77, in his *Constitutional Conflicts Between the President and Congress*, 1998.

*Steven Emanuel, "Executive Immunity," 130-31, in his *Constitutional Law*, 2004.

*William Green, "*Clinton v. Jones* (1997)," 194-95, in David Schultz and John R. Vile, *Encyclopedia of Civil Liberties in America*, 2005.

Clinton v. Jones (1997), E.6

*Steven Emanuel, "Appointment and Removal of Executive Personnel," 121-27, in his *Constitutional Law*, 2004.
Morrison v. Olson (1988), E.10

3. Presidential Diplomatic and War Powers

A. Diplomatic Power

*Louis Fisher, "Treaties and Executive Agreements," 225-55, in his *Constitutional Conflicts Between the President and Congress*, 1998.

*Steven Emanuel, "The Treaty Power and "Power Over Foreign Affairs," 62-63; and "Special Presidential Role," "Curtiss-Wright Case," and "Executive Agreements," 119-20, in his *Constitutional Law*, 2004.

William Green, "Executive Agreements," 332-33, in Lewis and Wilson, eds., *The Supreme Court*, 2000, B.1.
U.S. v. Curtiss-Wright (1936), F.1

U.S. Belmont (1937), F.5

U.S. v. Pink (1942), F.8

Dames and Moore v. Regan (1981), F.11

B. The Iraq War

*Louis Fisher, "War Power," 256-94, in his *Constitutional Conflicts Between the President and Congress*, 1998.

*Louis Fisher, "George W. Bush," 202-35, in his *Presidential War Power*, 2004.

*Steven Emanuel, "War Powers," 61-62 and "Commitment of Armed Forces," 120-21, in his *Constitutional Law*, 2004.

*Jack Rakove, "Who Declares War," *New York Times*, August 4, 2002.

*Margaret Burnham, "War Powers," *Jurist*, 2003.

Doe v. Bush (2003), G1

Woods v. Miller (1948), G.27

C. Enemy Combatant Detainees

*Louis Fisher, "Judicial Process Against Terrorists," 210-252, in his *Military Tribunals and Presidential Power*, 2005.

*Linda Greenhouse, "Justices Reaffirm Legal Rights of Enemy Combatants," *New York Times*, June 29, 2004.

*[Editorial,] "Reaffirming the Rule of Law," *New York Times*, June 29, 2004.

*Todd Purdum, "In Classic Check and Balance, Court Shows It Has Wartime Powers," *New York Times*, June 29, 2004

*Adam Liptak, "For Prisoners, Only Certainty is Right to a Court Hearing," *New York Times*, June 29, 2004

*News Hour, "U.S. Supreme Court Enemy Combatant Decisions." PBS, June 28, 2004.

Hamdi v. Rumsfeld (2004), G.6

Rasul v. Bush (2004), G.20

EXAM 1: October 12

SUPREME COURT AND FEDERAL SYSTEM

October 17 – December 7

1. National Power and the Federal System

A. The Federal System

*Kathleen M. Sullivan, "The Balance of Power Between the Federal Government and the States," in Brinkley, Polsby, and Sullivan, *The New Federalist*, 1997.

*Steven Emanuel, "Concept of Federalism," and "McCulloch v. Maryland," 19-25, in his *Constitutional Law*, 2004.
McCulloch v. Maryland (1819), H.1

B. National Power to Regulate Cigarettes

*Emanuel, "Congressional Action: Preemption and Consent," 88-92, in his *Constitutional Law*, 2004.

Cipollone v. Liggett Group (1992), J.1

2. National Powers to Regulate Alcohol, Guns, Incomes, and Drugs

A. Taxing Power and Retirement Income

*Steven Emanuel, "Taxing Power, 58-59, and "Taxing Immunities," "Federal Immunity from State Regulation," and "State Immunity from Federal Regulation," 99-102, in his *Constitutional Law*, 2004.

William Green, "Taxing and Spending Clause," 940-41; and "Taxing Immunities," 938-40, in Lewis and Wilson, eds., *The Supreme Court*, 2000. B.5 and B.7

Davis v. Michigan Department of Revenue (1989), H.9

B. Spending Power and Driving and Drinking

*Steven Emanuel, "Spending Power," 59-61, in his *Constitutional Law*, 2004.

William Green, "Taxing and Spending Clause," 940-41, in Lewis and Wilson, eds., *The Supreme Court*, 2000. B.5
South Dakota v. Dole (1987), H.17

C. Commerce Power and Guns, Sexual Violence, Drugs, and Wine Sales

*Steven Emanuel, "Commerce Clause Generally," 27-28; "Cases Prior to 1933," 28-31; "Court Barriers to New Deal," 31-33; and "The Modern Trend," 38-46, in his *Constitutional Law*, 2004.

*Linda Greenhouse, "Supreme Court Lifts Ban on Wine Shipping," *New York Times*, May 17, 2005

*Linda Greenhouse, "Justices Say U.S. May Prohibit the Use of Medical Marijuana," *New York Times*, June 7, 2005

*News Hour, U.S. Supreme Court Decision on Medical Marijuana," *PBS*, June 6, 2005

Gibbons v. Ogden (1824), I.1

NLRB v. Jones and Laughlin (1937), I.8

U.S. v. Darby Lumber (1941), I.10

Wikard v. Filburn (1942), I.16

U.S. v. Lopez (1995), I.36

U.S. Morrison (2000), I.57

Gonzales v. Raich (2005), I.45

Granholtz v. Heald (2005), I.58

*Steven Emanuel, "Tenth Amendment as a Limit on Congress' Power," 46-52, in his *Constitutional Law*, 2004.

Printz v. U.S. (1997), I.28

D. Hypothetical Case on National Regulation of Cigarettes

3. State Power to Regulate Transportation, Agricultural Products, Alcohol, Drugs, and Garbage Disposal

A. Commerce Clause and State Power

*Steven Emanuel, "Dormant Commerce Clause: Regulation," 68-74, in his *Constitutional Law*, 2004.

B. Commerce Clause and State Regulation of Transportation

*Steven Emanuel, "[State] Regulation of Transportation," 74-76, in his *Constitutional Law*, 2004.

Southern Pacific v. Arizona (1945), K.1

Kassel v. Consolidated Freightways (1981), K.26;

C. Commerce Clause and State Regulation of Agricultural Products, Alcoholic Beverages, and Prescription Drugs

*Steven Emanuel, "State Barriers to Incoming Trade," 76-80, "State Barriers to Outgoing Trade," 80-81, and "Local Processing Requirements," 81-82, in his *Constitutional Law*, 2004.

Hunt v. Washington State Apple Advertising Commission (1977), K.9;

Bacchus Imports v. Dias (1984), K.40

Maine v. Taylor (1986), K.44

Pike v. Bruce Church (1970), K.4

D. Commerce Clause and State Regulation of the Environment

*Emanuel "[State] Environmental Regulation," 82-84, in his *Constitutional Law*, 2004.

Philadelphia v. New Jersey (1978), K.13

Ft. Gratiot Sanitary Landfill v. Michigan (1992), K.33

4. States as a Participant in the Scrap Car and Cement Business

*Steven Emanuel, "State as Purchaser and Subsidizer," 84-86, in his *Constitutional Law*, 2004.

Reeves v. Stake (1980), K.17

5. Hypothetical Case on State Regulation of Alcoholic Beverages

CONCLUDING ACTIVITIES

December 9

Course and Group Evaluation

Course Information Questionnaire

*Self-Assessment of Discussion Group Participation, L.5

*Assessment of Discussion Group Members' Participation, L.7

EXAM 1: December 16 at 12:45

GENERAL INSTRUCTIONS FOR CASE BRIEFS, HYPOTHEICAL CASES AND READINGS

Your case briefs, readings, and hypothetical case assignments must comply with the following 6 requirements:

1. type your assignment, 2. use 8-1/2 X 11 paper and 1 inch margins, 3. type or hand write your name in the upper right hand corner or each page, and 4. staple the pages together. 5. Do not paper clip or dog ear the pages; and 6. do not use a cover sheet or plastic binder.

COURSE GRADE:

1. Basis for Course Grade and Grading Scale

- A. Your course grade will have 4 bases: 1) panel analyses of court cases (12.5%), 2) group discussions of readings and the hypothetical case (12.5%), 3) readings assignments, 25%, and two examinations: 25% each, 50% total.
- B. I will use the following plus-minus scale to evaluate your each basis of your course grade:
- A+=4.3, A=4.0, A-=3.7, A-/B+= 3.5,
B+=3.3, B=3.0, B-=2.7, B-/C+= 2.5,
C+=2.3, C=2.0, C-=1.7, C-/D+=1.5, and
D+=1.3, D=1.0, D-=.7

2. Panel Discussions of Court Cases. You will individually author your briefs of court cases using the "Primer on Case Briefing " and "Case Brief Form" in Green, *Constitutional Law in the Third Century*. You will brief one ungraded practice case, *Marbury v. Madison*, and hand it in at the end of the class for which it is assigned. Thereafter, you will write several case briefs prior to the classes for which they are assigned. You and other students assigned the case will use your briefs to discuss the case with me on the day assigned. If you know you will be absent on the day you are assigned, you must inform me as soon as possible or you will receive a failing grade on your case. I will allow a make-up case only in extraordinary circumstances. You are not excused from class attendance and participation and note taking, just because you are not assigned to discuss a case.

Your grade will be based on your in-class discussion of these cases. You will not be graded on your briefs, but you must hand them in at the end of the class during which they are discussed or you will not receive a grade for your participation. Your case grade will have 2 bases: first, your ability to pay attention to and follow the discussion, your preparedness to answer questions, and your willingness to volunteer answers; and second, your ability to answer questions about the cases, their legal terms and concepts, and related material in the assigned readings, in a clear, concise, and thorough manner with only minimal reference to your case briefs.

3. Readings and Hypothetical Problems and Case Assignments. You will read and study the articles in the "Assignments" section. I will provide you with questions for each assignment. You will answer the assigned questions prior to class. You will also research and summarize two hypothetical problems prior to classes devoted to their discussion.

To receive credit for these assignments, you must 1) complete them before class, 2) attend the entirety of the class, and 3) hand in your assignments at the end of the class for which they are assigned. If your assignment substantially complies with its requirements, you will receive a check. A check is 1 point. I will not accept excuses for late assignments, because the credit you receive on your assignments will be based on 3 less than the total number of assignments.

4. Group Discussions of Readings and Hypothetical Problem and Cases. In your group discussions of the readings and hypothetical problems, you have the responsibility to suggest how to address issues, direct attention to relevant cases and legal principles, identify relationships and sources of difficulty, and evaluate the workability of alternative solutions. You also have the responsibility to encourage participation by all members, be open, friendly, and responsive to the opinions and ideas of other members, and persuade members to analyze their differences and search for common ground. Your discussion grade will have 2 bases: 1) my observation of your group participation in terms of your fulfillment of your responsibilities and 2) your self assessment and your assessment of others using two forms in Green, *Constitutional Law in the Third Century*.

COURSE ASSESSMENT:

I have built this course around panel discussions of court cases and group discussions of readings and a hypothetical problem and cases. At the end of the semester, you will assist me in assessing their value for the next time I teach the course by completing the "Course Information Questionnaire."

PLAGIARISM NOTICE:

This course involves individual and group learning. Individual learning is governed by the university rules prohibiting plagiarism. You are required to individually author your case briefs, answers to questions on the readings, hypothetical case forms, and exams. Three acts of plagiarism are specifically prohibited and will result in a failing grade on the assignment in which they are discovered:

- 1) copying from another student's case brief, answers to questions on a reading, or hypothetical problem or case assignment and representing it as your own work;
- 2) collaborating with another student in writing a case brief, answering questions on a reading, or completing hypothetical problem case assignment and representing it as your own work; and
- 3) copying material from a book, article, court opinion, or internet site without quoting and/or citing the source and, thereby, representing it as your own work.

OFFICE HOURS:

You may discuss course-related matters during my office hours: 9:15-10:15 and 11:30-12:30 MWF1. My office phone is 783-2128. If I am not in my office, you may leave a message on my voice mail, on my office door folder, with the secretary in 350 Rader (783-2655), or contact me at 859-233-7513 or w.green@morehead-st.edu.

