

PO 332: U.S. Constitutional Law: Government Power

Saint Michael's College - Fall Semester 2022
Jeanmarie Hall 375; Mondays & Wednesdays 1:30pm - 3:05pm

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Student Drop-in Hours: Tuesdays 10:00am-12:00pm, Wednesdays 3:00pm-5:00pm, & by appointment

Course Description

“Our Constitution is a remarkable, beautiful gift. But it’s really just a piece of parchment. It has no power on its own. We, the people, give it power - with our participation, and the choices we make. Whether or not we stand up for our freedoms. Whether or not we respect and enforce the rule of law. America is no fragile thing. But the gains of our long journey to freedom are not assured.” –President Barack Obama, Farewell Address on 10 January 2017.

What is the Constitution? In one sense, it’s the supreme law of the United States. The Constitution delineates the power, structure, and role of each of the branches of the federal government. Constitutional law is the application of constitutional interpretation to the actions of the government. Yet, the Constitution is not just a rule book. The Constitution is also a political document. The government described in the Constitution is the result of fierce debate and reluctant compromise. While the foundation of that government has gone largely unchanged in the 230+ years since it was established, the federal government has been reformed and reshaped repeatedly over that same time as the people continue to discuss what is the best way for a society to participate in self-governance.

This course, which is the first of two courses on the study of U.S. constitutional law, will focus on exploring, explaining, and challenging how the Constitution structures the U.S. system of governance. At its core, this course will be a semester-long examination of the Montesquieu-inspired separation of powers doctrine and U.S. system of checks and balances that are fundamental to U.S. democracy. While we will primarily study these principles through judicial opinions and the court cases from which they stem, we won’t be simply looking at this material from a legalistic lens. Remember, the Constitution is also a political document. The interpretation and application of the Constitution is not and has never been an apolitical and neutral process. In order to truly understand and appreciate the effect of the Constitution on the U.S. democratic experiment, we must also use a political lens to complement our judicial analysis.

In short, during this course we will understand, analyze, and evaluate how the Constitution, and those who wrote it and later interpreted and applied it to governance, **1) divides power among multiple groups**, and **2) checks that power, both through institutional balancing as well as regular democratic elections**. In the spring, PO 334 will continue this discussion by focusing on how the judicial authority protects individual rights and liberties from government intrusion.

Required Text

We will consult one textbook during our discussions, with additional material provided online through the course Canvas page. While the citation below is the version available through the Saint Michael’s Bookstore, the second edition of the textbook (published in 2017) is also acceptable.

Gillman, Howard, Mark A. Graber, and Keith E. Whittington. 2022. *American Constitutionalism: Volume I, Structures of Government*, Third Edition. New York: Oxford University Press.

Readings are detailed in the Course Outline section of the syllabus. All readings, whether from the textbook or provided through the course Canvas page, are to be completed **before** the class session they are assigned.

Course Policies & Expectations

Attendance, Participation, & Lecture Resources

I will come to our class sessions on-time and prepared to lead a lecture and discussion for the full amount of time we have scheduled together; you can plan on a 5-10 minute break in the middle of each class. I expect each of you to also be ready to listen, question, and discuss for the same amount of time. I will aim to post lecture slides to Canvas the morning of the class period of the lecture.

Attendance counts as a very small portion of your participation grade. If you need to be absent, including if you are not feeling well, just e-mail me to give me a heads-up and you won't lose any attendance credit. If you are frequently absent, you will hear from me to check in and see how I can help you catch up and make sure you are ok. In order to help me learn your name and to take attendance, **I'm asking you to make a name tag that you can display on your desk.** The best way to do this is to fold a normal sheet of paper in thirds, and use a marker to write your name in big, bold letters. You can stand the name tag like a pyramid on your desk.

We are a highly vaccinated community and continuing to implement mitigation strategies to limit the spread of COVID-19 and other communicable infections. **While your personal risk to these infections may be low, some of your peers, faculty, staff, and their families are more vulnerable.** Please do your part to practice good citizenship and adhere to the health and safety policies so we can have a productive and safe semester. And also remember, these infections are termed communicable because they are easily spread; **contracting COVID-19, monkeypox, or any infection does not indicate a moral failure or a willful disregard for others.** Be compassionate and kind to each other - we could all do better at this in 2022.

There may be a reason for some or all of us to transition to an online format for a period of time - including if we are sick from a non-COVID-19 illness. To encourage you to stay home and focus on recovering when you are ill, all class sessions will be recorded and available in Echo360 on our course Canvas page. Please, take advantage of this setup and **do not come to class if you are not feeling well.**

Laptops & Other Electronics

The consensus of education scholarship¹ maintains students who take notes by hand retain more information over time than those who take notes on laptops or other electronic devices. Aside from the learning benefits of abstaining from laptop use for notes, the benefits of removing the audio/visual distractions associated with the use of electronic devices, both to you and those around you, are significant. As such, **the use of laptops, tablets, smartphones, and other electronic devices to take notes is strongly discouraged** during our time together. Using these devices for anything other than notetaking is not permitted in class.

If you insist on disregarding this notetaking advice, or you have a learning difference mitigated through the use of electronic devices, please avoid sitting in the front row(s) so you can minimize the distractions caused by your use of technology. Please note: if you are found to be using electronics for other activities (e.g. social media, checking e-mail, shopping, etc.) you will not be permitted to continue using electronic devices in class. Additionally, **audio and/or visual recording of class sessions is not permitted** without prior authorization from me.

¹Check out this [New York Times article](#) for a summary of the research.

Student Drop-in Hours & E-mail

I have four hours set aside each week where I am available in my office to consult with students. That time is **your** time; you do not need an appointment to come by. I strongly encourage students to come in and chat about topics from the readings or lecture, to discuss study skills, or to simply talk about any questions you may have with the course. I would prefer spending that time chatting with you instead of doing something else, so please, don't be a stranger! If your schedule prevents you from being able to see me during drop-in hours, you are welcome and encouraged to e-mail me to set-up an appointment when we can meet.

I'm comfortable meeting with students in my office, but your circumstances or preferences may differ. If you would prefer to meet via Zoom, I'm happy to do so; just click the Zoom link for drop-in hours on the front page of our course Canvas site. You'll be placed in a waiting room until I add you to my feed; please be patient if there's a slight delay - it means I'm meeting with your peers and I will get to you as soon as I finish with the others.

I welcome students getting in touch with me through e-mail. E-mails should primarily be used to address quick questions, not for requests to go over what was discussed in class because of an absence. E-mails are a form of professional correspondence, not informal text messages. I will respond to e-mails within 24 hours on weekdays (and often much sooner), but do not expect a reply after 5:00pm or on weekends.

I will communicate with the class often through Canvas messages or announcements. Please be sure your Canvas notifications are updated to ensure you are informed when these messages are sent out.

Late Submissions

College student life is busy. I have prepared a Course Outline that allows you to plan well in advance to complete our readings, assignments, and exams. I strongly encourage you to use this outline to ensure you prepare sufficient time to complete all the tasks associated with our course. Each of you can hopefully use the outline in conjunction with your personal calendars to avoid work piling up.

Even with good planning, life happens. As such, you have a 24-hour grace period to submit assignments. **For up to 24-hours after the due date of an assignment, you can submit it late, no questions asked, no excuses needed, and no penalty assessed.** If your circumstances make it necessary for you to submit work past the grace period, you should contact me so we can work out an arrangement and so I can provide you support in successfully completing the course. If you submit work after the grace period, but did not contact me in advance to discuss your unique circumstances, I will not grade the assignment and it will receive a zero. **I strongly advise you do everything you can to submit at the deadline** and not view the "real" deadline as simply being the end of the grace period; technical difficulties will not permit an extension beyond the grace period. **Also, due to College policy, I cannot accept the final exam late - it must be submitted by the deadline.**

Grade Appeals

I am committed to making the grading process as transparent as possible. I will prepare a rubric for most assignments/exams that outlines how they will be graded. When grades are posted, you should be able to see how you did according to the rubric in addition to any individual comments I make on your assignment or exam. **Grades are based on quality of work, not on a student's effort towards completing the work.** Think of your graded work like building a boat; you could spend a lot of time constructing that boat, but if when you take it out to the lake it immediately sinks, no one congratulates or pays you for spending a lot of time on building a defective boat. If you believe the grade does not adequately reflect the quality of your submitted work, you may take the following steps²:

²Please note due to time constraints in submitting course grades, final exams are not included in this policy

- Review any comments/feedback I have provided, including the rubric for the assignment or exam.
- If after reviewing my feedback you still have questions about how your assignment or exam was graded, come to my office hours and we can discuss it. **Please note: I do not discuss grades for 24 hours after they have been handed back to students.** This policy allows for all parties to discuss an assignment or exam without the immediate emotional reaction of seeing the grade.
- If after discussing your grade with me in person, you still believe the grade does not adequately reflect the **quality of your work**, write a one-paragraph written request for a re-grade and submit it to me by e-mail. The request should outline specific examples of your work that you believe were incorrectly graded. **Any request for a re-grade must be submitted within one week of the assignment or exam being returned to the student.** If your request is approved, I will evaluate the assignment or exam as though it is a new submission. As such, the assignment or exam may receive a lower grade, the same grade, or a higher grade. The result of this re-grade is final.

Campus Resources

Any student in need of accommodations for a learning difference, or who is unsure if they should receive any, should contact the [Office of Accessibility Services](#), located on the top floor of the Durick Library. You should also contact me to discuss necessary accommodations well in advance of the deadline for any assignment or exam. I am committed to upholding the College's policy on ensuring students in need of accommodations are fully supported.

I highly recommend all students take advantage of the academic resources offered by the [Academic Enrichment Commons](#), also located on the top floor of the Durick Library. These resources include tools to improve study skills, academic writing, as well as select topic-specific assistance. Another valuable service available to you is the [Writing Center](#), located on the main floor of the Durick Library. The Writing Center provides a comfortable space for you to write, as well as find help from trained student writing coaches. Almost all of these services are included in your student fees, so take advantage of them and get your money's worth.

Finally, learning how to practice good mental health and maintenance is just as important as learning the skills and knowledge associated with your college degree. I invite and encourage each of you to take the opportunity to speak with a mental health professional as often as you need or want while at St. Mike's. These professionals at the [Bergeron Wellness Center](#) are specifically here and trained to provide you the support and care you need as a college student. Please use their services as an important resource during your college experience. Take a look at their services using the link above, and remember, **it's ok to not be ok; it's a sign of strength to ask for help when you need it.**

Academic Integrity

Simply put: do not cheat. Do not consider cheating, attempt cheating, or encourage others to cheat. All work done for this course must be done individually unless otherwise specified. You cannot submit work done in previous courses, or in another course during this semester, for credit in this course unless we discuss and I explicitly authorize it. You cannot plagiarize. I have posted a document on our course Canvas page explaining what constitutes plagiarism and how to avoid it. **I strongly encourage every student to review this document, even if you think you already know what constitutes plagiarism.** Accidental plagiarism is still plagiarism and will be treated as such. If you have any questions about academic integrity, please reach out to me.

Any and all instances of violating the College's [academic integrity policy](#) will be reported to the Associate Dean of the College, and the assignment(s) and/or exam(s) that are the subject of the infraction will receive a zero.

Social Justice and Allyship

At the core of Saint Michael's mission is for everyone in our community to become an advocate for social justice, including a personal effort to be "intentionally inclusive." Political science is heavily involved in scholarship and education addressing many topics of social justice and building a more just and equitable society. I am personally committed to fulfilling this mission, and encouraging my students to do likewise. I strive to ensure my office and our classroom, whether physical or virtual, are safe spaces of inclusion for all. I invite each of you to join me in creating and ensuring such an environment during our time together.

Recent events have drawn attention to the issues and deficiencies that still exist within our society. The "Me Too" movement has highlighted how sexism, sexual harassment, and sexual abuse continue to plague our institutions and communities. Black Lives Matter calls on us to recognize systemic racism, particularly in policing and government, and pro-actively become anti-racists. Pride marches present an opportunity to celebrate recent hard-earned judicial recognition of the civil rights and liberties for LGBTQ+ people, and the ongoing need to continue fighting for rights still denied or once more threatened. The consequences of policies regarding the treatment of immigrants, refugees, and undocumented people rouse us to consider how we can be more charitable and compassionate in our treatment of vulnerable and historically marginalized populations. This list is hardly comprehensive, as there remain other issues regarding religious persecution, income inequality, climate justice, and on and on.

While we will not touch on all of these issues, we will discuss many of them in the context of this course. I encourage all of you to intentionally consider how you advocate for social justice in your own life, and how you are striving to continually become an ally to those in need of your support. The College provides several resources and campus groups to help support what is both a personal and collective mission to promote social justice and allyship. I list some below and encourage you to check them out if you have not already during your time at St. Mike's.

- **Center for Multicultural Affairs & Services:** They represent Saint Michael's "commitment to a campus and a world that values every human being, and supports and celebrates their uniqueness, experiences, and contributions." Some of their activities/groups include the Diversity Coalition, and the Martin Luther King, Jr. Society and Convocation.
- **Center for Women and Gender:** Their mission is "to promote awareness and activism around women's and gender equity issues by educating students, faculty and staff." They also support individuals by providing them with resources and referrals.
- **Common Ground:** A GSA (Gender and Sexuality Alliance) that seeks to provide a safe space on Saint Michael's campus for all members of the LGBTQ+ community.
- **Center for Global Engagement:** Serves as "the collaborative hub for international activity at SMC, promoting global learning and literacy, deepening inter-cultural competency and inclusion, and supporting opportunities for global engagement." Includes opportunities for study abroad, international internships, international and post-graduate volunteer opportunities (e.g. Peace Corps), and supporting international students on campus.

Boilerplate Notices

The following are some boilerplate notices I have included as we implement greater accessibility for the course. If you have any questions or concerns about them, please feel free to get in touch with me.

Recording and Posting of Class Sessions

Class sessions may be recorded by the professor and posted only to a College-approved site (e.g. Canvas). The recordings may include the student or their video feed, their name, and any materials they share during

the class session (e.g. screen share, chat messages, spoken comments, etc.). **By enrolling in this course, you consent to being recorded and for that recording to be posted to the course Canvas page.**

Professor's Copyright of Course Materials

The professor's lectures and course materials, including PowerPoint presentations, tests, outlines, and similar materials, are protected by U.S. copyright law and by College policy. The professor is the exclusive owner of the copyright in those materials they create. Students may take notes and make copies of course materials for their own use. Students may also share those materials with another student who is enrolled in or auditing this course. **Students may not reproduce, distribute or display (post/upload) lecture notes, recordings, or course materials in any other way, whether or not a fee is charged, without the professor's express prior written consent.** Students also may not allow others to do so. If a student violates this standard, they may be subject to student conduct proceedings under the College's academic integrity policy, including receiving a grade of F for the course.

Course Requirements

Grade Breakdown

All assignments are to be submitted in Canvas unless otherwise noted.

- 60% Analysis Papers - 4 papers at 15% each: one paper in each three or four week block due at 3:00pm on Friday, 23 September; Friday, 21 October; Friday, 11 November; Friday, 9 December (see outline for specific prompts).
- 25% Final Exam
 - Exam begins: Wednesday, 7 December, 3:00pm
 - Exam responses due: Tuesday, 13 December, 2:00pm
- 15% Seminar Participation (including weekly reflection journal entries due at 3:00pm on Fridays)

Analysis Papers

When judges and justices decide on a case to interpret constitutional or statutory law, stating the outcome is the easy part. The difficult part is explaining in detail the legal reasoning behind the decided outcome. That long, detailed legal reasoning argument is what we call the opinion of the court (or judge, or justice). We will be talking a lot about majority and dissenting opinions throughout the course. You will have the assignment to evaluate these opinions and their legal reasoning in detail at least four times.

Each paper should be **no more than 5 double-spaced pages**, 12-pt font. You need to choose four days during the course in which you will write an analysis paper responding to the prompt for that day (see the Course Outline for the prompts). Each day will have an accompanying paper prompt that asks you to analyze one or more of the opinions or legal arguments we will be discussing in class. None of these papers will require you to do extra reading or research - and you are strongly discouraged from doing so. What I'm expecting to see is a clear argument in response to the prompt, and a demonstration of a careful, detailed, and deliberate consideration of the relevant assigned readings in supporting your argument. You should expect to cite relevant portions of the readings ([Chicago format](#) is preferred, though any citation format is acceptable provided that you are consistent), with in-text parenthetical citations; you never need a title page, nor a reference page unless you are using sources outside of our readings. You will submit one paper in each roughly three week block. The late submission policy still applies. Finally, **you also have the option to do a fifth paper**; if you submit five papers, I will drop the lowest score of the five, thus leaving you with only four papers that count towards your grade.

Final Exam

We will have a comprehensive, take-home final exam beginning on Wednesday, 7 December, and due on Tuesday, 13 December. Anything and everything from lecture, discussions, or readings is fair game for inclusion in the final exam. Since you will have access to all of the readings and the lecture slides, no additional study guide will be provided. The exam is open-book, open-note - meaning you can use all of the resources provided on Canvas and in your textbook; you are neither required nor expected to use any other resources, so please, do not do so. As always, even though the exam is being completed at home, it should be done individually (see the Academic Integrity section).

The format of the final exam will consist of a number of short answer essay questions. I'll explain the specific expectations at least one week in advance. You will have until **Tuesday, 13 December at 2pm** to submit your final exam responses on Canvas. Please remember, the final exam cannot be accepted if it is submitted after the due date/time.

Seminar Participation

Our course will only be successful if we all participate and learn together. I expect everyone to participate over the 15 weeks we have together. Participation does not mean just asking questions or contributing to the discussion every week (though you are certainly encouraged to do so), nor does it mean that you should contribute so much that you forget to listen to what your peers have to share. Good civic discourse requires both sharing and listening. Please be sure to do both on a regular basis.

This is a political science course and we will be discussing political issues. Each of us has a unique opinion about many political issues, and some of these views are considered foundational to our varied belief systems. When we discuss these issues, there will likely be disagreement. That's a key part of politics; democratic governance anticipates and indeed promotes disagreement and differences of opinion. While we may have disagreements, I insist we discuss our differences with respect, civility, and empathy. Do your best to try to understand the point of view of your peers, even if you think they are completely wrong.

This standard does not mean you should avoid participating when you have an alternative point of view because you do not want to provoke an argument. Be bold! Share what you believe! You may be challenged to defend your beliefs, but that is an opportunity for you to learn and grow, not an attack on who you are or what you think. Deliberative discourse succeeds in preserving democracy when we listen with an empathetic ear, rather than speak with a threatening tongue.

Your participation grade will be based on your active participation in class, as well as your completion of weekly reflection journal entries. These journal entries are an opportunity for you to reflect on what you learned this week and what you still have to learn about a given topic. You can use this journal to help guide future research ideas, books to read, events to attend, and other activities towards developing a habit of lifelong learning. **For each entry, you should do the following two things at a minimum:** first, **discuss something new you learned this week and why it stood out to you.** This item could be additional information or a different perspective you had not previously considered, or something entirely new. Second, **share at least two questions you still have about the topics discussed this week or questions you now have after this week's discussions.** You will submit these entries weekly via Canvas by 3:00pm each Friday. I recommend using a single Word document that you just add on with a new entry every week. The entries are graded on a completion/non-completion basis - I'm not grading *what* you write, but rather *whether* you wrote or not. **You have 3 free passes to forget or just skip submitting an entry;** after that, you will lose points from your participation grade for each subsequent entry not submitted. **Because of this provision, journal entry submissions cannot be made up.**

Course Outline

This section provides a daily outline of what we will be doing during the next 15 weeks. Readings are to be completed **before** the class they are assigned. Any readings not from the textbook (GGW) can be found on [Canvas](#). This schedule is subject to change, but I will give you notice if/when that occurs.

Because the [2022](#) and [2017](#) versions of the GGW text are accepted, I have included the required reading for each text. You only need to read in one version!

Legend: [Canvas/Online Readings](#), [GGW 2017](#), [GGW 2022](#), [Paper Prompts](#), [Class Cancellation](#), [Exams & Assignments](#)

Origins of U.S. Constitutionalism

1. **Monday, 29 August:** What is U.S. Constitutionalism?
 - [GGW pp. 3-26](#)
 - [GGW pp. 3-26](#)
2. **Wednesday, 31 August:** American Constitutionalism before the U.S. - What Did the British American Colonies Do?
 - [GGW pp. 31-47](#)
 - [GGW pp. 31-47](#)
3. **Monday, 5 September:** Trial and Error: How Did the Founders Arrive at the Final Document?
 - [GGW pp. 49-56, 61-83 695-708](#)
 - [GGW pp. 49-56, 61-83 755-768](#)
 - *Paper Prompt 1:* Compare James Madison's "Virginia Plan" with the adopted Constitution (before any amendments were added after 1787). Was Madison's original proposal better than the adopted outcome? In other words, did the members of the Philadelphia convention improve on Madison's initial proposal, or did they make things worse? How so? Be specific!

The Federalist and Jeffersonian Eras

4. **Wednesday, 7 September:** Presidential Power in the Early Republic
 - [GGW pp. 83-99, 166-179](#)
 - [GGW pp. 83-99, 158-171](#)
 - *Paper Prompt 2:* The early years of the Second U.S. Republic saw significant debate over executive power. What did the founding generation want from the president? Is there an obviously correct legal answer to these early disputes, or is the "correct answer" just a matter of early party politics? Is it surprising to see the founding generation split so deeply over fundamental constitutional meaning?

5. **Monday, 12 September:** Judicial Power in the Early Republic

- GGW pp. 56-61, 101-118, 162-165
- GGW pp. 57-61, 99-113, 155-158
- *Paper Prompt 3:* Evaluate why Chief Justice Marshall believed in the power of judicial review (don't get bogged down in the facts of the *Marbury* case); how persuasive is his argument? The Constitution lacks any mention of judicial review. Should SCOTUS' constitutional authority be exclusive of the other branches (i.e. judicial supremacy), or are alternatives such as departmentalism or state review acceptable?

6. **Wednesday, 14 September:** Congressional Power in the Early Republic

- GGW pp. 118-140, 149-153
- GGW pp. 116-136, 143-147
- If using the 3rd Edition read the excerpts on the draft proposal (already in the 2nd edition).
- *Paper Prompt 4:* On what basis did Chief Justice Marshall conclude in his opinion in *McCulloch v. Maryland* (1819) that the federal statute authorizing the creation of a national bank was constitutional? In your opinion, between the strict and liberal schools of constitutional interpretation, who had the better argument?

The Jacksonian Era

7. **Monday, 19 September:** Andrew Jackson's Vision of Presidential Power

- GGW pp. 199-204, 226-241
- GGW pp. 189-194, 214-229
- *Paper Prompt 5:* President Jackson asserted a broad vision of presidential power that was unusual for the 19th Century. Explore the basis for his arguments and assess how convincing he was in particular with regards to the national bank (you can examine other aspects too, but make sure to include the bank). After the bank was legitimized by two different political parties and SCOTUS, should the president have the authority to disagree?

8. **Wednesday, 21 September:** Federalism and Nullification: Who Wins When the States and the Feds Disagree?

- GGW pp. 153-166, 220-227
- GGW pp. 147-149, 208-215
- Andrew Jackson's "Proclamation on Nullification."
- John C. Calhoun's "Exposition and Protest of South Carolina Against the Tariff."
- *Paper Prompt 6:* Jacksonian politicians debated federal power extensively. This fact is evident in debates about state encroachment on commerce regulation. Critics of federal power argued for new methods of state resistance. Evaluate the argument for nullification and the federal response. Was nullification a plausible interpretation of the Constitution? Has modern constitutional interpretation become more favorable or unfavorable towards nullification?
- First analysis paper due Friday at 3:00pm

9. **Monday, 26 September:** Slavery and the Constitution

- GGW pp. 144-146, 189-192, 204-220
- GGW pp. 140-142, 179-182, 194-208
- *Paper Prompt 7:* Read *Prigg v. Pennsylvania* (1842) and *Dred Scott v. Sandford* (1857). Did the increasingly bitter political and legal conflicts over slavery in the 1840s and 1850s corrupt what was otherwise a fair and just Constitution? Or did they reveal fundamental defects in a Constitution that was pro-slavery from the day it was adopted? Be sure to provide specific references to relevant provisions of the constitutional text and to one or more of the key slavery related debates from this period of time.

Civil War & Reconstruction

10. **Wednesday, 28 September:** Secession & State Sovereignty

- GGW pp. 243-246, 269-288, 306-309
- GGW pp. 231-235, 256-275, 293-296
- Jefferson Davis “The Right of Secession”
- *Paper Prompt 8:* Evaluate the secession claims of southern states - not only the slavery justification, but also the constitutional basis for arguments about secession itself unconnected to the morality of slavery. Are their constitutional arguments persuasive? Attention should be given to the previous material on federalism, national power, and popular sovereignty. Was the Constitution an act of the people as a national entity, or a contract agreed to by independent, sovereign states?

11. **Monday, 3 October:** Presidential Power during War and Reconstruction

- GGW pp. 246-253, 288-306
- GGW pp. 236-242, 275-293
- Summary of *Ex parte Milligan* (1866)
- *Paper Prompt 9:* A major debate in U.S. constitutionalism is whether President Lincoln acted constitutionally when he suspended the writ of habeas corpus in 1861. Evaluate whether his actions were justified or not. If not, why did he do it? If so, why did the Chief Justice of the United States object so strongly to the president’s actions? Is there even an obviously right answer to this unprecedented, and arguably unforeseen, situation?

The Gilded Age and Constitutionalism

12. **Wednesday, 5 October:** The Roots of Modern Presidential Power

- GGW pp. 311-322, 386-398
- GGW pp. 298-306, 371-385
- If using 2nd Edition, read the *Blue v. Beach* case.
- *Paper Prompt 10:* Cleveland, Roosevelt, Taft, and Wilson offer dramatically different views of presidential responsibility with the debate between Roosevelt and Taft being the most famous and significant. In your view, which perspective represents the proper understanding of presidential power? Does earlier experience weigh in favor of one of these views?

13. **Monday, 10 October:** Judicial Power and Interpreting the 14th Amendment

- GGW pp. 192-195, 322-339, 373-377, 379-385
- GGW pp. 182-187, 306-322, 356-363, 365-370
- If using 3rd Edition, read *Frothingham v. Mellon*
- Summary of *Lochner v. New York* (1905)
- *Paper Prompt 11:* During the Gilded Age, states began to experiment with new forms of judicial power. Most importantly, many began to experiment with judicial elections and the popular recall of judges. Were these innovations an abandonment of judicial power, or recognition that judicial power has to change with the more democratic times? Should such innovations be applied to the federal judiciary as well? Consider this question in light of the evolution of judicial power to this point.

14. **Wednesday, 12 October:** Congressional Power and the Rise of Industrial Capitalism

- GGW pp. 346-358, 366-373
- GGW pp. 329-341, 349-356
- *Paper Prompt 12:* Read *Hammer v. Dagenhart* (1918) and consider the justification for striking down a ban on child labor. What kind of Constitution is it that would prevent the people's elected representatives from outlawing child labor? Does this decision indicate some fundamental defect in the Constitution, at least in 1918? Was *Hammer* consistent with earlier interpretations of the commerce power?

The New Deal and A New Constitution?

15. **Monday, 17 October:** Political Realignment and Constitutional Conflict

- GGW pp. 401-412, 415-422, 441-447, 463-467, 484-489
- GGW pp. 387-396, 399-406, 424-434, 446-453, 468-473
- *Paper Prompt 13:* Read FDR's undelivered speech on the Gold Clause Cases and his fireside chat on the Court packing plan. Was the president's criticism of SCOTUS justified? Why or why not? What implications do FDR's arguments have for conflicts about the role of SCOTUS today? Be specific.

16. **Wednesday, 19 October:** A New Constitution

- GGW pp. 413-415, 447-454, 467-471
- GGW pp. 397-399, 430-437, 450-453
- View a [short summary](#) of the case and decision in *U.S. v. Darby* (1941)
- *Paper Prompt 14:* What does the major revolution in constitutional law evident in today's readings say about the role of SCOTUS? Is this a rediscovery of a "correct" constitutional past, or a new constitutional path? In other words, does this amount to simply overruling incorrect precedents that unfairly restricted federal power, or is it an example of judicial constitutional amendments creating new powers? If the latter, are judicial amendments legitimated by FDR's political position?
- [Second analysis paper due Friday at 3:00pm](#)

17. **Monday, 24 October:** Expounding on the New Constitutional Order

- GGW pp. 423-441, 454-463
- GGW pp. 406-424, 437-446
- *Paper Prompt 15:* SCOTUS adopted an expansive view of its own power in the post-WWII era. Outline the nature of this power and challenges presented to it. Does judicial review slip into judicial supremacy in this time period? In other words, is the expression of judicial power dramatically different from earlier periods? Should we think again about alternative means of selecting justices or other limitations on the Court?

18. **Wednesday, 26 October:** Warren Court and Adjudicating Democracy

- View this [90 minute discussion](#) on *Baker v. Carr* (1962)
- Summary of *Reynolds v. Sims* (1964)
- *Paper Prompt 16:* When asked which was the most important decision during his time as Chief Justice, Earl Warren answered *Baker v. Carr* (1962). What about this decision warrants such a high opinion - especially in the context of the other landmark decisions during his tenure (e.g. *Brown v. Board of Education*, *Miranda v. Arizona*, *Griswold v. Connecticut*, etc.)? Think back to voting rights in prior periods, on what does SCOTUS base its “one person, one vote” conclusion in *Reynolds v. Sims* (1964)? In other words, is SCOTUS simply imposing an arbitrary definition of democracy?

19. **Monday, 31 October:** War and the Modern Presidency

- Remember, **tomorrow is Election Day**. You can register to vote in Vermont, even on Election Day. If you are eligible to vote, no matter who you vote for, make sure you vote!
- GGW pp. 471-484, 489-494, 517-527
- GGW pp. 457-468, 473-477, 505-511
- View this [90 minute discussion](#) on *Korematsu v. United States* (1944)
- *Paper Prompt 17:* Read Justice Robert Jackson’s concurring opinion in *Youngstown Sheet & Tube v. Sawyer* (1952). Evaluate Jackson’s solution to war powers disputes. Does it make sense? Is it workable? Do any of the other justices offer a better solution? Provide specific examples, either historical or hypothetical, in support of your argument.

The Conservative Shift

20. **Wednesday, 2 November:** Reagan Revolution

- GGW pp. 495-498, 537-556
- GGW pp. 483-486, 521-535
- If using 3rd Edition, read the excerpts on the Bork nomination.
- *Paper Prompt 18:* The Reagan Administration officially endorsed originalism as the preferred constitutional theory of the Republican Party. Is this a decision based on law or politics; is there a way to honestly separate the two? Given the material we have studied so far, are you convinced that a search for original intent and/or meaning is objective, if even possible?

21. **Monday, 7 November:** Congress v. Presidents in the Modern Era

- [GGW pp. 570-584, 657-664, 689-693](#)
- [GGW pp. 548-562, 616-623, 644-648](#)
- *Paper Prompt 19:* With the rise of the New Deal state, Congress frequently found it more efficient to adopt broad guidelines and defer actual rulemaking to executive agencies. But Congress also wanted to maintain some influence over these decisions. Evaluate how the Court resolved these tensions between congressional oversight and executive power.

22. **Wednesday, 9 November:** War on Terror

- [GGW pp. 597-599, 664-687](#)
- [GGW pp. 575-577, 623-640](#)
- Read over this interactive [NPR article](#) on the Obama Administration's previously classified justification for using drone strikes in targeted assassinations of American citizens abroad
- Savage 2018 - Syrian Airstrike Justification
- *Paper Prompt 20:* President George W. Bush pushed an expansive interpretation of presidential authority over foreign relations, and seemed to do so with the tacit consent of Congress. Given our studies of the war powers, were these claims something new, or just a continuation of prior trends? Is this interpretation a partisan issue? Meaning, have Presidents Obama, Trump, or Biden significantly differed from Bush on this issue?
- [Third analysis paper due Friday at 3:00pm](#)

23. **Monday, 14 November:** Congress v. Courts in the Modern Era

- [GGW pp. 557-558, 608-617, 629-634, 641-647](#)
- [GGW pp. 535-537, 585-599, 606-612](#)
- Read a summary of *Gonzales v. Raich* (2005).
- *Paper Prompt 21:* In *U.S. v. Lopez* (1995) SCOTUS enforced limits on Congress' commerce power for the first time since the 1930s. Why did it do this? Is *Lopez* a major revolution in constitutional law or just a minor correction? What does *Gonzales v. Raich* (2005) add to this evaluation?

24. **Wednesday, 16 November:** The Affordable Care Act

- [GGW pp. 617-629](#)
- [GGW pp. 658-667](#)
- Howe 2015 - *King v. Burwell* (2015) summary
- *Paper Prompt 22:* Evaluate the opinions in *Sebelius* (2012). Why does the Court uphold the Affordable Care Act? Is this a complete victory for liberals? In other words, did the Court abandon the 1990s federalism revolution? Does the Court offer any victories, even if partial, to conservatives?

25. **Monday, 21 November:** No Class - Thanksgiving Break

26. **Wednesday, 23 November:** No Class - Thanksgiving Break

27. **Monday, 28 November:** Judicial Power in the Current Era

- GGW pp. 589-597, 599-607
- GGW pp. 565-575, 577-585, 654-658
- If using 2nd Edition, read the excerpt on Merrick Garland's nomination.
- Peters 2013 - Senate Changes Filibuster
- *Paper Prompt 23:* Consider the message sent by the Court in *City of Boerne*. Is there any limit to the Court's power today? Is the increasingly partisan confirmation system an important part of this increased power? Given the wide degree of judicial authority, should the barriers in judicial appointments be limited so that new presidents have an easier time changing the Court? Given the Garland experience, is there any possibility that an opposition Senate allows the president to confirm any judicial nominations?

28. **Wednesday, 30 November:** Recent Decisions on Democracy

- GGW pp. 667-673
- If using 2nd Edition, read the opinion in *Shelby County v. Holder*.
- Liptak 2019 - SCOTUS Bars Challenges to Partisan Gerrymandering
- Howe 2019 - No Role for Courts in Partisan Gerrymandering
- Lockhart 2019 - Effects of *Shelby County v. Holder* on Voting Rights
- *Paper Prompt 24:* Many of the recent judicial decisions regarding democratization consider the role of the Fifteenth Amendment and the Voting Rights Act of 1965, two key pieces of law that were necessary for the U.S. to finally be considered a liberal democracy nearly 200 years after its founding. Consider the cases assigned for today and the judicial decisions. Does the Constitution guarantee a fundamental right for U.S. citizens to vote? How expansive or narrow is that right; or in other words, are the Court's recent decisions a correct interpretation of the Constitution's narrow guarantee of the right to vote, or do they reflect an inaccurate understanding of the need for the government to protect a broad right to vote?

29. **Monday, 5 December:** Congress' Role in Defending Democracy

- GGW pp. 684-688, 719-753
- Excerpts for these pages are on Canvas for those using the 2nd Edition.

30. **Wednesday, 7 December:** Future of the Court on Government Power

- Fourth (and optional fifth) analysis paper due Friday at 3:00pm
- Final Exam begins at 5:30pm
- Final exam responses due Monday, 13 December at 2:00pm