

PSC 330 Constitutional Law  
TR 11:30AM-12:45PM  
WRI C-239

Prof. Jerry L. Simich  
WRI 218-B  
jerry.simich@unlv.edu  
Office Hours  
TR 9:00AM-10:00AM &  
12:45PM-1:15PM  
and by appointment  
Ph. 895-1337; if no answer  
call 279-4556

**The Course:** A cases and materials approach to the U.S. Constitution; the power of the Congress, the executive and federal judiciary; separation of powers and the nation-state relations; as well as issues raised under the Commerce Clause and the powers to tax and spend.

If you have a documented disability that may require assistance, you will need to contact Disability Services (DS) for coordination in your academic accommodations. Disability Services is located within Learning Enhancement Services (LES), in the Reynolds Student Services Complex, Suite 137. The phone number is 895-0866 or TDD 895-0652.

The University requires all members of the University Community to familiarize themselves and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. Violations of copyright laws could subject you to federal and state penalties and criminal liabilities as well as disciplinary action under University policies. To help familiarize yourself with copyright and fair use policies, the University encourages you to visit its copyright web page at: <http://www.unlv.edu/committees/copyright>.

**The Text:** Please purchase Lee Epstein and Thomas Walker, Constitutional Law for A Changing America: Institutional Powers and Constraints, 6th Edition On reserve in the library you may consult Kermit Hall (ed) The Oxford Companion to the United States Supreme Court.

**Briefing Cases:** See p. 717. Strongly Recommended

**Legal Terms:** Consult the Glossary, pg. 718.

**Examination Dates:** Will be announced at least one week before the examination. The First examination will cover chapters 1 & 2; the second examination will cover chapters 3 & 4; the third and final examination will cover chapters 5 & 6. The final examination is not comprehensive.

# CONTENTS

---

Chronological Table of Cases	xi
Tables, Figures, and Boxes	xiii
Preface	xvii
<b>I THE U.S. CONSTITUTION</b>	
An Introduction to the U.S. Constitution	3
The Road to the U.S. Constitution	3
Underlying Principles of the Constitution	7
READINGS	11
<b>1. UNDERSTANDING THE U.S. SUPREME COURT</b>	
Processing Supreme Court Cases	13
Supreme Court Decision Making: The Role of Law and Legal Principles	25
Supreme Court Decision Making: The Role of Politics	37
Conducting Research on the Supreme Court	47
READINGS	50
<b>II INSTITUTIONAL AUTHORITY</b>	
Structuring the Federal System	55
The Origins of the Separation of Powers/Checks and Balances System	55
Separation of Powers and the Constitution	56
Contemporary Thinking on the Constitutional Scheme	58
READINGS	60
<b>2. THE JUDICIARY</b>	
Establishment of the Federal Judiciary	63
Judicial Review	68
<i>Marbury v. Madison</i> (1803)	68
<i>Martin v. Hunter's Lessee</i> (1816)	79
<i>Eakin v. Raub</i> (1825)	89
Constraints on Judicial Power: Article III	94
<i>Ex parte McCordle</i> (1869)	94
<i>Hamdan v. Rumsfeld</i> (2006)	97
<i>Baker v. Carr</i> (1962)	105
<i>Nixon v. United States</i> (1993)	111
<i>Flast v. Cohen</i> (1968)	117
Constraints on Judicial Power: The Separation of Powers/Checks and Balances System	123
READINGS	125
<b>3. THE LEGISLATURE</b>	
Article I: Historical Overview	127
Congressional Authority over Internal Affairs: Institutional Independence and Integrity	131
<i>Powell v. McCormack</i> (1969)	134
<i>U.S. Term Limits, Inc. v. Thornton</i> (1995)	140
<i>Gravel v. United States</i> (1972)	149
Sources and Scope of Legislative Powers	153
<i>McCulloch v. Maryland</i> (1819)	155
<i>McGrain v. Daugherty</i> (1927)	164
<i>Watkins v. United States</i> (1957)	169

viii CONTENTS

<i>Barenblatt v. United States</i> (1959)	173	<i>The Prize Cases</i> (1863)	289
<i>United States v. Curtiss-Wright Export Corp.</i> (1936)	179	<i>Ex parte Milligan</i> (1866)	294
<i>South Carolina v. Katzenbach</i> (1966)	185	<i>Ex parte Quirin</i> (1942)	301
Congress and Constitutional Interpretation	189	<i>Korematsu v. United States</i> (1944)	307
READINGS	190	<i>Youngstown Sheet &amp; Tube Company v. Sawyer</i> (1952)	311
<b>4. THE EXECUTIVE</b>	192	<i>Dames &amp; Moore v. Regan</i> (1981)	317
Article II: Basic Considerations	192	<i>Hamdi v. Rumsfeld</i> (2004)	322
<i>Bush v. Gore</i> (2000)	195	<i>Hamdan v. Rumsfeld</i> (2006)	329
The Faithful Execution of the Laws:		READINGS	336
Defining the Contours of Presidential Power	208	<b>III NATION-STATE RELATIONS</b>	
<i>In re Neagle</i> (1890)	208	Allocating Government Power	339
Domestic Powers of the President	214	The Framers and Federalism	340
<i>Clinton v. City of New York</i> (1998)	215	The Tenth and Eleventh Amendments	341
<i>Morrison v. Olson</i> (1988)	222	READINGS	343
<i>Myers v. United States</i> (1926)	230	<b>6. FEDERALISM</b>	344
<i>Humphrey's Executor v. United States</i> (1935)	236	Nation-State Relations: The Doctrinal Cycle	345
<i>United States v. Nixon</i> (1974)	240	<i>McCulloch v. Maryland</i> (1819)	346
<i>Mississippi v. Johnson</i> (1867)	245	<i>Scott v. Sandford</i> (1857)	354
<i>Nixon v. Fitzgerald</i> (1982)	247	<i>Hammer v. Dagenhart</i> (1918)	360
<i>Clinton v. Jones</i> (1997)	252	<i>United States v. Darby Lumber</i> (1941)	365
<i>Ex parte Grossman</i> (1925)	259	<i>National League of Cities v. Usery</i> (1976)	367
<i>Murphy v. Ford</i> (1975)	262	<i>Garcia v. San Antonio Metropolitan Transit Authority</i> (1985)	374
The President and Foreign Policy	263	<i>New York v. United States</i> (1992)	379
<i>United States v. Curtiss-Wright Export Corp.</i> (1936)	264	<i>Printz v. United States</i> (1997)	383
READINGS	267	The Eleventh Amendment	390
<b>5. THE SEPARATION OF POWERS SYSTEM IN ACTION</b>	268	<i>Alden v. Maine</i> (1999)	392
Domestic Powers	269	New Judicial Federalism	399
<i>Mistretta v. United States</i> (1989)	273	<i>Michigan v. Long</i> (1983)	401
<i>Immigration and Naturalization Service v. Chadha</i> (1983)	278	National Preemption of State Laws	407
<i>Bowsher v. Synar</i> (1986)	284	<i>State of Missouri v. Holland</i> (1920)	407
Presidential Power During War and National Emergencies	287	<i>Crosby v. National Foreign Trade Council</i> (2000)	409
		<i>Pennsylvania v. Nelson</i> (1956)	415

	<i>Pacific Gas and Elec. v. State Energy Resources Conservation and Development Comm'n</i> (1983)	418		
	READINGS	422		
7.	<b>THE COMMERCE POWER</b>	424		
	Constitutional Foundations of the Commerce Power	424		
	<i>Gibbons v. Ogden</i> (1824)	426		
	Defining Interstate Commerce	430		
	<i>United States v. E. C. Knight Co.</i> (1895)	432		
	<i>Stafford v. Wallace</i> (1922)	436		
	The Supreme Court and the New Deal	438		
	<i>A. L. A. Schechter Poultry Corp. v. United States</i> (1935)	443		
	<i>Carter v. Carter Coal Company</i> (1936)	448		
	<i>National Labor Relations Board v. Jones &amp; Laughlin Steel Corporation</i> (1937)	453		
	<i>Wickard v. Filburn</i> (1942)	461		
	<i>United States v. Lopez</i> (1995)	465		
	<i>United States v. Morrison</i> (2000)	471		
	<i>Gonzales v. Raich</i> (2005)	476		
	Regulating Commerce as a Federal Police Power	482		
	<i>Champion v. Ames</i> (1903)	483		
	<i>Heart of Atlanta Motel v. United States</i> (1964)	487		
	Commerce Power of the States	489		
	<i>Cooley v. Board of Wardens</i> (1852)	492		
	<i>Southern Pacific Company v. Arizona</i> (1945)	496		
	<i>Hunt v. Washington State Apple Advertising Commission</i> (1977)	499		
	<i>Maine v. Taylor</i> (1986)	504		
	<i>Granholm v. Heald</i> (2005)	506		
	READINGS	508		
8.	<b>THE POWER TO TAX AND SPEND</b>	510		
	The Constitutional Power to Tax and Spend	510		
	Direct Taxes and the Power to Tax Income	512		
	<i>Pollock v. Farmers' Loan &amp; Trust Co.</i> (1895)	515		
	Taxation of Exports	520		
	<i>United States v. United States Shoe Corp.</i> (1998)	520		
	Intergovernmental Tax Immunity	522		
	<i>South Carolina v. Baker</i> (1988)	524		
	<i>Davis v. Michigan Dept. of Treasury</i> (1989)	526		
	Taxation as a Regulatory Power	529		
	<i>McCray v. United States</i> (1904)	530		
	<i>Bailey v. Drexel Furniture Co.</i> (1922)	533		
	Taxing and Spending for the General Welfare	537		
	<i>United States v. Butler</i> (1936)	537		
	<i>Steward Machine Co. v. Davis</i> (1937)	542		
	<i>South Dakota v. Dole</i> (1987)	546		
	Restrictions on the Revenue Powers of the States	549		
	<i>Michelin Tire Corp. v. Wages</i> (1976)	549		
	<i>Complete Auto Transit v. Brady</i> (1977)	553		
	<i>Quill Corp. v. North Dakota</i> (1992)	555		
	<i>Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.</i> (1994)	559		
	READINGS	562		
	<b>IV ECONOMIC LIBERTIES</b>			
	Economic Liberties and Individual Rights	565		
	READINGS	567		
9.	<b>THE CONTRACT CLAUSE</b>	568		
	The Framers and the Contract Clause	568		
	John Marshall and the Contract Clause	570		
	<i>Fletcher v. Peck</i> (1810)	570		
	<i>Trustees of Dartmouth College v. Woodward</i> (1819)	575		
	Decline of the Contract Clause:			
	From the Taney Court to the New Deal	580		
	<i>Proprietors of Charles River Bridge v. Proprietors of Warren Bridge</i> (1837)	581		
	<i>Stone v. Mississippi</i> (1880)	586		
	<i>Home Building and Loan Assn. v. Blaisdell</i> (1934)	589		