

# Constitutional Law: The Separation of Powers and Governmental Institutions

Political Science 353  
Summer Semester 2007  
Dr. Kevin Lyles  
Version 7.11

8:00-10:30, TR, 311 BSB  
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## I. Introductory Statement

This is a course in American politics. The major purpose is to examine the role and functions of courts, primarily the U.S. Supreme Court, in the American political system. The key objective is to conceptualize and discuss courts and law as part of, not apart from, the political process.

The central focus of the course is on the Supreme Court and its role in dealing with major problems and issues of constitutional law. In the main, these problems and issues will be examined in two major areas; i.e., the nature and operation of separation of powers; and the nature and operation of the federal system. Only limited attention will be given to civil rights and civil liberties since major topics in these areas are reserved for study in other con law courses I teach; e.g., Political Science 251, 252, 354, and 356.

In attempting to meet our major objectives, attention will be given to: 1) the nature, capacity, and limitations of courts and the judicial process in dealing with policy issues; 2) the substance of judicial policies and factors that might account for policy continuity and change over time; 3) the political-social impact of judicial policies; and, 4) the role of the judicial function in the resolution and management of policy conflict.

Particular attention is also given to the relation and interaction of the judiciary with other governing institutions, i.e., the Congress and President, in the formulation of public policy and in the political system generally.

### Course Format.

The class will be conducted in an informal seminar format utilizing the Socratic method. This format lends itself to continuous active engagement and dialogue between the professor and students and among students themselves. Accordingly, students are encouraged and expected to attend and participate in class. Meaningful participation, however, requires that students must come to class prepared. Should this occur, the class will be an interesting, challenging, and an exciting learning experience. A word of caution: it is important that students prepare for each class since material is cumulative and the workload increases dramatically as the semester proceeds. Attendance in class and participation in discussion seminars is both mandatory and essential. I will randomly take attendance. Your attendance grade will be calculated based on the percentage of days you are present when attendance is taken.

A caution and reminder: it is important that students prepare for each class since material is cumulative and the workload of the course increases dramatically as the term proceeds. Moreover, the nature of the materials and expectations of

the course make it very difficult for students to "catch up and understand" overnight unless a consistent pattern of study has been taking place all along.

## II. Readings and Materials

(1) There is only one required text for PoS 353 this summer: David M. O'Brien, Constitutional Law and Politics: Struggles for Power and Governmental Accountability, Sixth Edition, (Vol. I, 2005).

(2) Students must also familiarize themselves with Lexis/Nexis via the UIC Library (on-line). You can also access Lexis/Nexis from home/dorm using your UIC net-id),

(3) Many of the cases can also be located at one of the following web sites:

<http://www.supremecourtus.gov/>

<http://www.uscplus.com/>

<http://www.findlaw.com/>

<http://supct.law.cornell.edu/supct/index.php>

### Optional Texts:

Lawrence Baum, The Supreme Court

### Book Review Options (pick one)

Kevin Lyles, The Gatekeepers

David O'Brien, Storm Center

Peter Irons, A History of the Supreme Court

H. W. Perry, Deciding to Decide

Phillip J. Cooper, Battles on the Bench

Students should prepare a *written* brief for every case that is not preceded with an asterisk (\*). These required cases have **bold** typeface. Cases and materials preceded with an asterisk (\*) are optional.

## III. Course Requirements

Student participation (briefing cases and discussion) in class is required. **Attendance is required** and constitutes 20 percent of your final grade.

### Computation of Course Grade

#### Option I.

Attendance/Participation/Briefs/ and Quizzes	20%
Mid-term Examination	40%
Final Examination	40%

OR

#### Option II.\*

Attendance/Participation/Briefs/ and Quizzes	20%
Mid-term Examination	30%
Final Examination	30%
Book Review	20%

*\*Details for the optional Book Review assignment are attached at the end of the syllabus and will eventually be posted on [Blackboard](#) under week one. Students who do not submit the book review on July 17 will be graded under the requirements for Option I.*

**All students must utilize the UIC [Blackboard](#) Learning system.** You can enter UIC [Blackboard](#) Learning System from the UIC homepage, go to "learning at UIC," or go directly to <http://blackboard.uic.edu/>. **Caution:** I will send many notes to you during the semester using Blackboard; these notes are automatically routed to you UIC email account.

**The tape recording of any part of my class (or the use of any other electronic recording device) is strictly prohibited.**

Students with disabilities who require accommodations for access and participation in this course must be registered with the Office of Disability Services (ODS). Please contact ODS at 312/413-2103 (voice) or 312/413-0123 (TTY). If you have a documented disability and wish to discuss academic accommodations, please contact me immediately.

Students should be familiar with UIC's policies regarding academic integrity. These guidelines can be found at the following URL: [www.uic.edu/depts/sja/integrit.htm](http://www.uic.edu/depts/sja/integrit.htm)

### **Readings/Case Law.**

Readings under the various topic areas are only suggestive of the vast and growing literature and case law available. All assigned cases must be read prior to the class session for which they are assigned. Be prepared to review and discuss all assigned cases and readings in class. You should prepare a written brief for call required cases (indicated in **bold** type)

### **Tentative Summer Schedule**

- Date headings are merely suggestive of when discussion might begin for each topic area and are subject to change (keep on track)
- Not all "required" material listed on the syllabus will be discussed in class, however said materials are "fair game" for the midterm and final examinations.

- Additional material will be added to the syllabus during the semester (like the Constitution, the syllabus can be amended).

**Remember, cases and other materials preceded by an asterisk (\*) are optional.**  
*You are not required to read optional material before class; however, it may be included on examinations to the extent that I discuss it in class.*

## WEEK ONE

**Tuesday May 29**

Introductory comments and course requirements.

The course syllabus for PoLS 353, Summer 2007 [[Blackboard](#)]  
 Con Law with Lyles at UIC [[Blackboard](#)]

**Thursday May 31**

*Before coming to class Today:*

1. Make sure you have an active UIC computer account
2. Familiarize yourself with UIC [Blackboard](#)
3. Read (skim) the first three chapters of the O'Brien book, pp. 1-219. You are not required to read the cases, just the text between the cases.

**Note:** *if you have already taken an undergraduate constitutional law class with me [i.e., 251, 252, 354, or 356], then your attendance on **May 31 and June 5 is optional**. I will cover the structure of the federal courts, types of writs, how to brief a case, judicial review, statutory interpretation, mechanical vs. behavioral jurisprudence, internal and external limits on the Court, legal definitions, etc., Marbury v. Madison and the "incorporation of the Bill of Rights." My lecture is similar for each of the above listed classes for the first few class periods. Be warned however, this material will be included on the exams. You will not be marked absent on these days if you send an email to me indicating that you have completed one of these classes with me prior to taking PoLS 353.*

### **Lecture Day: History, Operation and Function of the Federal Courts, part 1.**

1. An Overview of the Federal Courts
2. Federal Courts in Political-Social Context
3. Courts as policymaking institutions
- \*4. Baum, chapters 1,2,3
- \*Lyles, *The Gatekeepers: Federal District Courts in the Political Process*, ch. 1, p. 1-9.

## WEEK TWO

**Tuesday June 5**

### **Lecture Day: History, Operation and Function of the Federal Courts, part 2**

- \*Baum, chapters 4,5,6
- Researching Constitutional Law

**Melone, pp. 104-114, "How and why to brief a case" [Blackboard]**

\*O'Brien "The How, Why, and What to Briefing and Citing Court Cases" pp. 1035-1038.

Understanding the Politics of Judicial selection

\*Lyles, *The Gatekeepers*, ch. 2, p. 11-35.

**Read (skim) the first three chapters of the O'Brien book, pp. 1-219. You are not required to read the cases, just the text between the cases.**

The Judiciary: Judicial Review and Constitutional Politics

\**Hylton v. U.S.* (1796)

\**Calder v. Bull* (1798), 29

***Marbury v. Madison* (1803), O'Brien, p. 46 [prepare a written brief for today]**

\**Martin v. Hunter's Lessee* (1816), 765

***Eakin v. Raub* (1825), 55 [Gibson's dissent]**

\**Muskrat v. United States* (1911)

Jurisdiction and Justiciable Controversies:

O'Brien, pp. 103-221 (skim entire section with special focus on the following cases, briefs are not required for this section, pp. 103-221)

Certification, writs of mandamus, writs of habeas corpus

Jurisdiction

\**Ex Parte McCardle* (1869)

Adverseness and Advisory OpinionsStanding to sue

\**Frothingham v. Mellon* (1923)

\**Flast v. Cohen* (1968), 130-137

\**Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 137-141

\**Lujan v. Defenders of Wildlife* (1992), 141-145

Ripeness and Mootness

\**DeFunis, Bakke, Roe v. Wade, etc.*,

Political questions

\**Luther v. Borden* (1849)

\**Colegrove v. Green* (1946)

\**Baker v. Carr* (1962), 145-157

\**Goldwater v. Carter* (1979), 157-161

Stare DecisisCert. and the Rule of Four

Oral argument

Summarily Decided Cases

\**Florida v. Meyers* (1984)

**Finish reading (skim) the first three chapters of the O'Brien book, pp. 1-219. You are not required to read the cases, just the text between the cases.**

**Thursday June 7**I. Presidential Power, the Rule of Law and Foreign AffairsAs Commander in Chief and in Foreign Affairs

**O'Brien, pp. 220-310**

***United States v. Curtis-Wright Corporation*, (1936), 229-231 [prepare a written brief for today]**

\**Haig v. Agee* (1981)

***Dames & Moore v. Regan* (1981), 231-237 [prepare a written brief for today]**

\**Dames & Moore v. Regan*, by Monroe Leigh. *The American Journal of International Law*, Vol. 75, No. 4 (Oct., 1981), pp. 954-957

*Sale v. Haitian Centers Council, Inc.*, (1993), 237-239 [prepare a written brief for today]

The Treaty-Making Power and Executive Independence

*Missouri v. Holland* (1920), 243 [prepare a written brief for today]

[National Preemption of State Laws]

\**United States v. Belmont* (1937)

*United States v. Pink* (1942), 246-248 [prepare a written brief for today]

*Goldwater v. Carter* (1979), 157-161 [prepare a written brief for today]

*United States v. Alvarez-Machain* (1992), 250-254 [prepare a written brief for today] Also, Find this case on Lexis/Nexis (the full opinion), and print ONLY the first page of the case (as downloaded and/or printed directly from Lexis/Nexis) and turn in the "one" printed page today for two points on your first exam. Turn in ONLY the first printed page from Lexis/Nexis with your name written at the top.

\*Lyles, *The Gatekeepers*: ch. 3, pp. 37-72.

**WEEK THREE**

**Tuesday June 12**

War-Making and Emergency Powers

*The Prize Cases* (1863), 264-268 [prepare a written brief for today]

*Ex parte Milligan* (1866), 268-274 [prepare a written brief for today]

*Korematsu v. United States* (1947), 274-283 [prepare a written brief for today]

*Rasul v. Bush* (2004), 283-288 [prepare a written brief for today]

*Hamdi v. Rumsfeld* (2004), 288-302 [prepare a written brief for today]

War Powers Resolution, O'Brien, pp. 302-307.

**The President as Chief Executive in Domestic Affairs**

O'Brien, pp. 310-450

National Security and Inherent and Emergency Powers

*Youngstown Sheet and Tube Co. v. Sawyer* (1952), 316-331 [prepare a written brief for today]

*New York Times Co. v. United States* (1971), 331-340 [prepare a written brief for today]

Appointment and Removal Powers

*Myers v. United States* (1926), 345-357 [prepare a written brief for today]

**Thursday June 14**

*Humphrey's Executor v. United States* (1935), 357-360 [prepare a written brief for today]

\**Wiener v. United States* (1958)

*Bowsher v. Synar* (1986), 360-370 [prepare a written brief for today]

*Morrison v. Olson* (1988), 370-386 [prepare a written brief for today]

Legislative Powers in the Administrative State

*Schechter Poultry Corporation v. United States* (1935), 394-400 [prepare a written brief for today]

*Industrial Union Department, AFL-CIO v. American Petroleum Institute* (1980), 400-403 [prepare a written brief for today]

*Immigration and Naturalization Service v. Chadha*, (1983), 403-414 [prepare a written brief for today]

\**Clinton v. City of New York* (1998), 414-423

**WEEK FOUR**  
**Tuesday June 19**

Accountability and Immunities

**United States v. Nixon (1974), 433-434** [prepare a written brief for today]

Articles of Impeachment against President Richard M. Nixon, Recommended by the House Judiciary Committee, pp. 441-444 (skim)

**Clinton v. Jones (1997), 444-450** [prepare a written brief for today]

Articles of Impeachment against President William Jefferson Clinton, Recommended by the House Judiciary Committee, pp. 450-454 (skim)

\*Lyles, *The Gatekeepers*: ch. 4, pp. 73-115.

\*For extra credit (0-3 points) added to your *first* exam score, write a short essay/critique (about 3-4 typed pages) summarizing the main points in *The Story of Marbury v Madison*, by Michael W. McConnell [Blackboard under Week Four]. In addition to providing a complete summary of the reading, provide also your own assessment of the material covered, do you agree or disagree, why? Is this discussion relevant today, in 2007? Your extra credit essay is due TODAY.

**Thursday June 21**  
**MIDTERM EXAMINATION**

**WEEK FIVE**

**Tuesday June 26**

II. CONGRESS: Membership, Immunities, Powers, Taxing and Spending, the Commerce Clause

**O'Brien, pp. 455-516**

Membership and Immunities

**Powell v. McCormack (1969), 463-468** [prepare a written brief for today]

**U.S. Term Limits Inc. v. Thornton (1995), 468-476** [prepare a written brief for today]

**Gravel v. United States (1972), 476-480** [prepare a written brief for today]

Investigatory, Contempt, and Impeachment Powers

\**McGrain v. Dougherty* (1927)

**Eastland v. United States Servicemen's Fund (1975), 480-483** [prepare a written brief for today]

**Hutchinson v. Proxmire (1979), 483-485** [prepare a written brief for today]

Investigatory, Contempt, and Impeachment Powers

**Watkins v. United States (1957), 490-498** [prepare a written brief for today]

**Barenblatt v. United States (1959), 498-505** [prepare a written brief for today]

**Gibson v. Florida Legislative Investigation Committee (1963), 505-511** [prepare a written brief for today]

**Walter L. Nixon v United States (1993), 511-514** [prepare a written brief for today]

**Thursday June 28**

Congress: Legislative, Taxing, and Spending Powers

**O'Brien, pp. 516-642**

**McCulloch v. Maryland (1819), 527-538** [prepare a written brief for today]

\*Lyles, *The Gatekeepers*: ch. 5, pp. 117-154, especially pp. 121-123, and, 134-135.

The Constitutional Foundation of the Commerce Power

*Gibbons v. Ogden* (1824), 538-544 [prepare a written brief for today]

From Legal Formalism to the New Deal Crisis

*United States v. E.C. Knight Company* (1895), 550-555 [prepare a written brief for today]

*Hammer v. Dagenhart* (1918), 555-558 [prepare a written brief for today]

From New Deal Crisis to the Administrative State

O'Brien, pp. 559-564

*National Labor Relations Board v. Jones & Laughlin Steel Corporation* (1937), 565-572 [prepare a written brief for today]

*United States v. Darby Lumber Company* (1941), 572-576 [prepare a written brief for today]

*Wickard v. Filburn* (1941), 576-579 [prepare a written brief for today]

## WEEK SIX

### Tuesday July 3

\**Heart of Atlanta Motel, Inc. v. United States* (1964) and *Katzenbach v. McClung*, 579-588 (see PoS 252)

*United States v. Lopez* (1995), 588-600 [prepare a written brief for today]

\**Reno v. Condon* (2000), 600-601

\**City of Boerne v. Flores* (1997), 604-616

*United States v. Morrison* (2000), 616-627 [prepare a written brief for today]

Taxing and Spending Powers

*Pollack v. Farmer's Loan and Trust Co.* (1895) (as discussed in class)

*McCray v. United States* (1904) (as discussed in class)

*United States v. Doremus* (1919) (as discussed in class)

*Bailey v. Drexel Furniture Co.* (1922) (as discussed in class)

*J. W. Hampton, Jr. and Co. v. United States* (1928) (as discussed in class)

Taxing and Spending for the General Welfare

\**United States v. Butler* (1936)

*Steward Machine Co. v. Davis* (1937), 632-636 [prepare a written brief for today]

*United States v. Kahriger* (1953), 636-638 [prepare a written brief for today]

*South Dakota v. Dole* (1987), 638-641 [prepare a written brief for today]

\*Lyles, *The Gatekeepers*: ch. 6, pp. 155-201.

## The States and American Federalism

State's Power over Commerce and Regulation

O'Brien, pp. 642-799

*Cooley v. Board of Wardens of the Port of Philadelphia* (1852), 659-664 [prepare a written brief for today]

*Southern Pacific Co. v. Arizona* (1945), 664-668 [prepare a written brief for today]

### Thursday July 5

*Bibb v. Navajo Freight Lines, Inc.* (1959), 668-670 [prepare a written brief for today]

*Maine v. Taylor* (1986), 670-672 [prepare a written brief for today]

*Pennsylvania v. Nelson* (1956), 672-676 [prepare a written brief for today]

[National preemption of state laws]

\*Lyles, *The Gatekeepers*: ch. 7, pp. 203-221, esp. Table 7.1 – 7.5.



The Tenth and Eleventh Amendment and the States

\**Collector v. Day* (1871)

\**Coyle v. Oklahoma* (1911)

*Edwards v. California* (1941) (as discussed in class)

*National League of Cities v. Usery* (1976) (as discussed in class)

***Garcia v. San Antonio Metropolitan Transit Authority* (1985), 700-714 [prepare a written brief for today]**

\**New York v. United States* (1992), 714-720

***Printz v. United States and Mack v. United States* (1997), 720-732 [prepare a written brief for today]**

\**Cohens v. Virginia* (1821)

***Seminole Tribe of Florida v. Florida* (1996), 732-742 [prepare a written brief for today]**

***Alden v. Maine* (1999), 742-749 [prepare a written brief for today]**

\**Kansas v. Colorado* (2001), p. 724 only

***Nevada Dept of Human Resources v. Hibbs* (2003), 749-755 [turn in a written brief for today]**

Judicial Federalism (skim section)

***Martin v. Hunter's Lessee* (1816), 765-770 [prepare a written brief for today]**

*Cooper v. Aaron*, (1958), 770-774 as discussed in class (See Lyles PoIS 252)

***Younger v. Harris* (1971), 774-778 [prepare a written brief for today]**

**WEEK SEVEN**

**Tuesday July 10**

\**Stone v. Powell* (1976), 778-783 (see Lyles, Pols 354, exclusionary rule discussion)

\**Withrow v. Williams* (1993), 783-785 (see Lyles, Pols 354, *Miranda* warnings discussion)

\*Lyles, *The Gatekeepers*: chapters 8 and 9, pp. 223-267.

State Courts and State Constitutional Law

\**Michigan v. Long* (1983), 790-795 (see Lyles, Pols 354, illegal searches, *Terry v. Ohio*)

\**People v. P.J. Video, Inc.* (1986), 795-798 (see Lyles Pols 354, standards of probable cause, search and seizure)

\**Commonwealth of Kentucky v. Wasson* (1992), 208-212 (see Lyles Pols 356, homosexual rights and sodomy laws)

**Representative Government, Rights, and Electoral Politics**

**O'Brien, [lightly skim 800-947]. I cover this entire section in detail in Con Law 252 (See Lyles, PoIS 252).**

**Lecture on voting rights, time permitting**

\**United States v. Reese* (1876), as discussed in class

\**Colegrove v Green* (1946), as discussed in class

\**Gomillion v. Lightfoot* (1960), 832-834 as discussed in class

\**Baker v. Carr* (1962), 145-157 [Hint: see the "model brief" in Melone, pp. 104-114.

"Why and How to Brief a Case." [Blackboard, Week One]

\*The 1965 Voting Rights Act, excerpt from Lyles, *The Gatekeepers*, pp. 89-90 [Blackboard]

Review the Main Provisions of the Voting Rights Act of 1965, see Davis and Graham, p. 133 Box 3.3, p. 234 Box 4.1; and/or, *Gatekeepers*, pp. 13, 33 n.20, 89-90, 145 n.18, 101, 136, Preclearance, p. 93. [Blackboard]

***South Carolina v. Katzenbach* (1966), 811-818 [prepare a written brief for today]**

\**Shaw v Reno* (1993), 860-865 (as discussed in class)

\**Bush v Gore* (2000), 883-894 (as discussed in class)

\**Buckley v Valeo* (1976), 894-904 (as discussed in class)

### **Economic Rights and American Capitalism**

The Contract Clause and Vested Interests in Property

**O'Brien, pp. 947-1029**

*Fletcher v. Peck* (1810), 953-956 [prepare a written brief for today]

*Trustees of Dartmouth College v. Woodward* (1819), 956-961 [prepare a written brief for today]

*Charles River Bridge Co. v. Warren Bridge Co.* (1837), 961-968 [prepare a written brief for today]

*Home Building and Loan Association v. Blaisdell* (1934), 968-973 [prepare a written brief for today]

***City of El Paso v. Simmons* (1965), 973-976 [prepare a written brief for today]**

**Thursday July 12**

\**United States Trust Co. of New York v. State of New Jersey* (1977), 976-979

### **The Development and Demise of the "Liberty of Contract" (starts at p. 980)**

\**Butchers' Benevolent Association v. Crescent City Livestock Landing and Slaughterhouse Co.* [*The Slaughterhouse Cases*] (1873), 993-998 (see Lyles, Con Law 251, the "unity of purpose doctrine")

\**Munn v. Illinois* (1877), 998-1000 (see Lyles, Women and the Law, Pols 356)

\**Lochner v. New York* (1905), 1000-1006 (see Lyles, Women and the Law, Pols 356)

\**Muller v Oregon* (1908), 1006-1009 (see Lyles, Women and the Law, Pols 356)

\**Nebbia v. New York* (1934) (see Lyles, Women and the Law, Pols 356)

\**West Coast Hotel Co. v. Parrish* (1937), 1009-1012 (see Lyles, Women and the Law, Pols 356)

\**Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.* (1946), 1012-1013 (see Lyles, Women and the Law, Pols 356)

The Takings Clause (starts at p. 1114)

*Hawaii Housing Authority v. Midkiff* (1984), 1017-1020 [prepare a written brief for today]

*Nollan v. California Coastal Commission* (1987), 1020-1023 [prepare a written brief for today]

***Lucas v. South Carolina Coastal Council* (1992), 1023-1029 [prepare a written brief for today]**

*Kelo v. City of New London* (2005) find on lexis/nexis. [prepare a written brief for today]

**Tuesday July 17**

**FINAL EXAM TODAY**

**ALL BOOK REVIEWS ARE DUE AT THE "START OF CLASS" TODAY.** [for guidelines, see Blackboard under WEEK ONE]. You may not submit your paper electronically, or

leave your paper in my mailbox, or under my office door. You must bring the paper to the *START* of class today. It must be printed in BLACK ink; it must be printed single-sided; and, it must be stapled in the upper left-hand corner. Early submissions will not be accepted.

**FINAL EXAM**  
**8:00 – 10:30**