American Constitutionalism I:  
Structures of Power  
Political Science 216  
Williams College

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W 9-11, F 1:30-2:30, and by appointment

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M(W)F 11-12:15  
Schapiro 129

Description.  
How has the American Constitution been debated and understood over time? What is the relationship between constitutional and political change? This course examines the historical development of constitutional law and politics from the Founding to the present. Our focus is largely on structures of power— the limits on congressional lawmaking, growth of presidential authority, establishment of judicial review, conflicts among the three branches of the federal government, and boundaries between the federal and state and local governments—but, to the extent that these concerns implicate substantive debates about issues such as racial equality or privacy, we will touch on individual rights as well. (Those issues, along with freedom of speech and religion, criminal process, property, and much more, are covered extensively in American Constitutionalism II: Rights and Liberties.) The specific disputes range from secession to impeachment, gun control to child labor, waging war to spurring commerce; the historical periods to be covered include the Marshall and Taney Court years, the Civil War and Reconstruction, the Progressive era, the New Deal, the Warren Court, and the conservative ascendancy of the late twentieth century. Throughout the semester, our goal will be less to remember elaborate doctrinal rules and multi-part constitutional “tests” than to understand the changing nature of, and changing relationship between, constitutional power and constitutional meaning in American history.

Objectives.  
Thinking Contextually. Contrary to popular (and even much academic) belief, the Constitution exists outside the marble temple of the Supreme Court. In fact, rather than solely the province of “law,” constitutional disputes and resolutions are the products of executive, legislative, bureaucratic, partisan, and mass politics. Thus, while we will pay close attention to the Supreme Court, we will also strive to make sense of constitutional struggles not as exclusively judicial or peculiarly apolitical occurrences but as one (perhaps unique) type of politics that is inextricably woven into the fabric of American government. In other words, we will attempt to imagine the Constitution not in isolation but within the broader context of the American socio-polity.

Thinking Dynamically. The Constitution shapes politics, but, as we shall see, it is also shaped by politics—and, indeed, by many other forces as well. Our challenge, therefore, is two-fold: first, to think about both the ways in which the Constitution responds to political, social, economic, and intellectual currents and crises; and, second, to think about the ways in which such phenomena are a function of the structure and substance of the Constitution itself. As a result, we will consider the readings not as static cases or documents but as parts of broader trajectories and narratives of legal, political, and constitutional evolution.
Format.
Class will combine elements of lecture, discussion, and what is traditionally considered the “Socratic method” (targeted questioning of students). In order to facilitate broad participation, I will both accept volunteers and call on students directly. In either case, there will be ample opportunity for you to ask questions, share your views, and interrogate the course material.

Materials.
- The Constitution of the United States of America (handout) (Const)
- PSCI 216 course packet (in four volumes) (CP)**

Contributions.***

Essays (20% each for a total of 60%). Three 5-7 page analytic essays due on dates of your own choosing, with the stipulation that you hand in at least one essay for or before session 14 (“The Four Horsemen” – October 24) and at least one essay after that session. (Failure to do so will result in a zero for one of your essay grades.) You may, if you wish, submit a fourth essay, in which case I will drop the lowest of the four—provided it is not a zero—when calculating your course grade. Each essay will answer a question from the attached list and is due at the beginning of the class for which that particular question is posed. Your challenge in these essays is neither to embark upon outside research nor to summarize the views of others but, rather, to analyze the material (both primary and secondary), reflect on the issues at hand, and articulate your own argument in the form of a well-reasoned and well-supported answer to the assigned question.

Final Exam (25%). A cumulative exam consisting of identifications, notable quotations, and essays. Provided sufficient interest, I will be glad to hold a review session at the conclusion of the semester. More details on both the exam and the review session will be provided at a later date.

Class Participation (15%). A process of active engagement that entails more than simply showing up. Accordingly, participation grades are not a “free 15%” but, rather, a reflection of my holistic assessment of your performance in class.

Evaluation.

Written Work. Good writing is good thinking—that is to say, writing well first requires thinking well. The manner in which and the depth with which you approach writing and thinking will be the determining factors in your grade. More specifically, I base grades for written work on the following three factors: the extent to which you make a clear, compelling, and original argument; the extent to which you support that argument through close analysis and consideration of primary and secondary source evidence; and the extent to which you organize and articulate your thoughts in a logical and sophisticated structure. Needless to say, proper mechanics of writing—including features such as grammar, capitalization, punctuation, spelling, and so forth—are assumed; be sure to proofread your work in order to catch any errors along these lines.

Written work in the A range is characterized by a strikingly creative, perceptive, and persuasive argument; comprehensive synthesis and trenchant analysis of an abundance of course material; straightforward yet sophisticated organization of thoughts; and clear, cogent, fluid, and

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* Available for purchase at Water Street Books.
** The first volume is available for pickup at the Class of ’37 House (51 Park Street) from 9am to 3:30pm M-F; the remaining volumes will be distributed shortly.
*** I reserve the right to fail any student who fails any element—essays, final exam, class participation—of the course.
error-free prose. Written work in the B range is characterized by a sound, original, and reasonably thoughtful argument; competent analysis of various course material; logical and intelligible organization; and clear, cogent, and error-free prose. Written work in the C range is characterized by a relatively underdeveloped, simplistic, or derivative argument; partial, inconsistent, or faulty analysis of course material; convoluted organization; and awkward, stilted, or otherwise distracting prose. Written work in the D range is characterized by an incoherent or extremely confusing argument; superficial or fleeting engagement with the course material; chaotic or irrational organization; and distorted, error-riddled prose. Written work that lacks any argument or analysis, fails to engage the course material, or is any way incomprehensible earns an F.*

**Participation.** Three factors contribute to class participation grades: the degree to which you demonstrate analytic or critical understanding of the course material, the degree to which you articulate thoughtful or original questions and arguments in response to the course material, and the degree to which you succeed in advancing discussion by responding meaningfully to what others have said. The emphasis here is on *quality*, not *quantity*. Select insightful offerings are infinitely more valuable than a multitude of derivative or mediocre ones. Worry not: provided you attend class, complete the reading, and think carefully about the themes of the course, you will be in an excellent position to contribute thoughtfully to discussion.

Participation grades in the A range are reserved for those students who consistently come to class with questions and comments, engage others in a respectful manner, and generally elevate the level of discussion. Participation grades in the B range are earned by those students who participate but do not stimulate discussion, adequately listen to their classmates, or relate their comments to the direction of the conversation. Participation grades in the C range are for those students who are infrequent or unwilling contributors to discussion. Participation grades of D and F, respectively, are for those students who do not arrive adequately prepared for class and for those who disrupt and detract from the overall quality of the course.

**Responsibilities.**

**Attendance.** Put simply, I expect you to be in class *each and every day*. I do not formally call roll, but I notice—and make a mental note!—when you are absent. Besides avoiding my undying wrath, you should plan on full attendance for three reasons. First, participation, which counts for 15% of your final grade, is impossible if you are not present. Second, the lectures and discussions that occur in class will be crucial elements of your learning in this course. Third, and most importantly, by choosing to take this class, you are making a commitment to me, to your classmates, and to yourself that you will be an active and engaged participant in our academic community. Class will go on without you, but everyone’s learning will suffer as a consequence of your absence. If you know in advance that missing class will be unavoidable, please have the courtesy to let me know.

**Punctuality and Preparedness.** As part of your aforementioned commitment to me, your classmates, and yourself, you are expected to arrive in class on time, prepared, and without technological distractions. This means, first, that you have thoroughly and carefully read the material before class and, second, that you have thought about that material and are willing and ready to contribute your thoughts to discussion. Of course, I recognize that students lead busy lives, have commitments (both academic and otherwise) in addition to this course, and may occasionally be affected by unforeseen events and unpredictable circumstances that make adequate preparation difficult. Even in those instances, I still urge you to come to class and encourage you to let me know—either

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* The following adjectives capture the essence of what individual grades mean in this course: truly exceptional (A+), outstanding (A), excellent (A-), very good (B+), good (B), satisfactory (B-), fair (C+), sub-par (C), poor (C-), seriously deficient (D+), minimally acceptable (D), borderline unacceptable (D-), completely unacceptable (F).
through an email in advance of class—or a quick comment upon entering class—that you were unable
to prepare as fully as you had hoped. Not only will you not be penalized for your disclosure, but I
agree not to call on you for that period. I trust you not to abuse my generosity by availing yourself
of this option more than twice.

**Discourse and Decorum.** You are responsible for conducting yourself appropriately—
both in your own comments and in your responses (verbal or otherwise) to the comments of your
peers. As respectful discourse is the norm, criticism should be reserved for ideas, arguments, and
opinions rather than for people; ad hominem comments will not be tolerated.

**Submitting Work.** Since there is already considerable flexibility built into the schedule of
course assignments (*twenty* distinct dates for which, and subjects on which, to write an essay!), I
expect you to hand in work on time. Because the assignments are intended to provoke critical
thinking about particular issues *before* we discuss them in class, I will neither grant extensions nor
accept late work. Moreover, since class discussions will often (though not always) be geared around
the essay questions and thus reliant on students who have answered them to offer opinions and
insights, I only accept essays submitted *in class and in person.* These policies are not meant to be
punitive but, rather, to help enrich learning by enabling each of you to develop ideas independently
and then share those ideas with the rest of us in the appropriate class session.

**Academic Honesty.** I hope—frankly, I *expect*—this will not be an issue, but it is worth
repeating that all work you do in this course is governed by the College’s Honor Code. (If you have
any questions about how the Honor Code applies, do not hesitate to ask!) I take scholarly integrity
very seriously, and any suspected violations will be pursued to the fullest extent. *No exceptions.*

**Contact Information.**

**Email.** The most efficient way to reach me is via email. As a general rule, emails received
before 9pm will usually receive a reply that day; emails received after 9pm will likely receive a reply
on the following day.

**Office Hours.** For my regularly scheduled office hours, no sign-up or prior notice is
necessary, nor is a specific course-related question or concern. (If you wish to schedule an
appointment for another time, you should let me know a few days in advance.) Although I am
obviously available to discuss any issues that may arise in class or in the reading, you are also more
than welcome to stop by and join me for some friendly conversation. Indeed, I encourage you to do
so; really—come see me. I am interested in learning about you and your thoughts, and I never (well,
ok, hardly ever) tire of talking about American constitutionalism.

**Phone.** Though email is, as noted above, the easiest way to reach me, you should feel free
to call me in the office at any time. If, between the hours of 8am and 6pm, you have a question that
requires urgent attention, you may also contact me at home.

**Some Final Thoughts.**

I take teaching seriously, and I hope you will reciprocate by taking learning seriously. That
said, I intend for our classes to be enjoyable—both for you and for me. This course revolves
around rich, interesting, and controversial debates, many (if not all) with direct connection to current
events and contemporary American politics. So expect to teach each other and to learn from each
other, but also expect to enjoy yourself; for my part, I promise to do the same.
Introduction

1. Blago, Burris, and Constitutional Fill-in-the-Blank (September 5)

I. In the Beginning…*

2. From Colonies to Confederation to the Miracle at Philadelphia (September 8)
   CP: The Declaration of Independence
   Paine, excerpts from Common Sense and The Crisis
   The Articles of Confederation
   Madison, “Vices of the Political System of the United States”
   Virginia Plan
   New Jersey Plan
   Wood, “Introduction” from The Radicalism of the American Revolution
   Ellis, “The Generation” from Founding Brothers
   Rakove, “The Politics of Constitution-Making” from Original Meanings

3. We the People (September 10)**
   CP: Epps, “How to Read a Constitution” from American Epic
   Const: Preamble and Articles I-VII (a general sense)
   Preamble and Articles I-VII (a fine-toothed comb)
   Preamble and Articles I-VII (a critical eye)

4. The American Science of Politics (September 12)
   CP: Adams, Letter to Richard Henry Lee
   Centinel, The Anti-Federalist I
   Brutus, The Anti-Federalist II
   Publius, selections from The Federalist
   Dry, “The Constitutional Thought of the Anti-Federalists”
   Hofstadter, “The Founding Fathers”

II. The Early Years

5. Baby Steps (September 15)
   CP: Judiciary Act of 1789
   Hayburn’s Case (1792)
   Chisholm v. Georgia (1793)
   Const: 11th Amendment

* Quite remarkably, the College owns original copies of the nation’s founding documents, including the Declaration of Independence, the Articles of Confederation, the Constitution, The Federalist, and the Bill of Rights. Although the documents will ultimately be housed in the Chapin Library (on the fourth floor of Sawyer Library), they are currently on display—with a touring copy of the Magna Carta—at the Clark Art Institute (a short walk past Garfield and Agard on South Street). While I will not require you to visit, I cannot recommend strongly enough that you choose to do so at some point during this first unit. (The Clark also has a beautiful new reflecting pool—complete, I’m told, with frogs! Oh, and lots of world-renowned art, too.)

** Since we will lose one of our class sessions in October for Mountain Day—a function solely of meeting MF rather than MW—we are adding a Wednesday session here.
CP:  *Hylton v. US* (1796)
    *Calder v. Bull* (1798)
    Alien and Sedition Acts
    Virginia and Kentucky Resolutions

McC:  pp. 1-23

8.  Contracts, Commerce, and the Roots of American Political Economy  (September 26)
    Const:  Article I, Section 8, Clause 3
            Article I, Section 10, Clause 1
    CP:  *Fletcher v. Peck* (1810) [from session 7]
            *New Jersey v. Wilson* (1812)
            *Dartmouth College v. Woodward* (1819)
III. A Nation Divided

9. The Jacksonians Come to Court  (September 29)
   Const:  Article I, Section 8, Clause 3
   Article I, Section 10, Clause 1
   Article IV, Section 4
   CP:  Introductory Statement of the Democratic Principle
   Jackson, Maysville Road Bill Veto
   Clay, Speech on the Maysville Road Veto
   Calhoun, “Fort Hill Address”
   Webster, Speech on Nullification
   South Carolina Ordinance of Nullification
   Jackson, Proclamation on Nullification
   Jackson, Veto of the Bank
   Webster, Speech on Jackson’s Bank Veto
   Charles River Bridge v. Warren Bridge (1837)
   Mayor of New York v. Miln (1837)
   Luther v. Borden (1849)
   Cooley v. Board of Wardens (1852)
   McC:  pp. 53-59

10. Law, Courts, and the Peculiar Institution  (October 3 or 6)*
   Const:  Article I, Section 9, Clause 1
   Article IV, Section 2
   CP:  The Antelope (1825)
   Garrison, “On the Constitution and Union”
   Jacksonians Reorganize the Federal Judiciary
   Prigg v. Pennsylvania (1842)
   Douglass, “The Constitution and Slavery”
   Fugitive Slave Act of 1850
   Emerson, Address to the Citizens of Concord on the Fugitive Slave Law
   Douglass, “What to the Slave is the Fourth of July?”
   Dred Scott v. Sandford (1857)
   Lincoln, Speech on the Dred Scott Decision
   Ableman v. Booth (1859)
   McC:  pp. 59-64, 65-66 (from “But like Marshall…”)
   CP:  Graber, excerpts from Dred Scott and the Problem of Constitutional Evil

* The dates of the next three sessions—Law, Courts, and the Peculiar Institution; Forged in the Crucible of War; From the Ashes of War, the Seeds of Discord—will depend upon which Friday class is cancelled for Mountain Day. Whenever Mountain Day is announced, we will simply postpone consideration of the scheduled material until the next session, adjusting—but maintaining the order of—the subsequent classes accordingly.
11. Forged in the Crucible of War (October 6 or 10)
   Const:  Article I, Section 9, Clause 2
   Article II, Section 2, Clause 1
   CP:  South Carolina Ordinance of Secession
       Davis, “The Right of Secession”
       Lincoln, First Inaugural Address
       Ex parte Merryman (1861)
       Lincoln, Fourth of July Message to Congress
       Bates, Opinion on the Suspension of Habeas Corpus
       Lincoln, Proclamation Suspending Habeas Corpus
       Curtis, excerpts from Executive Power
       Lincoln, Second Annual Message to Congress
       The Prize Cases (1863)
       Lincoln, Emancipation Proclamation
       Lincoln, Gettysburg Address
       Lincoln, Second Inaugural Address
       Ex parte Milligan (1866)
   McC:  pp. 64-65 (until “But like Marshall…”), 70-73 (until “The enemies of…”)
   CP:  Vermeule, “Lawfare from the Bench”
       Kleinerman, “Lincoln’s Example”

IV. Anatomy of a Constitutional Revolution

12. From the Ashes of War, the Seeds of Discord (October 10 or 17)
   Const:  13th Amendment
   CP:  The Republicans Reorganize the Federal Judiciary
       Johnson, First Annual Message to Congress
       Civil Rights Act of 1866
       Johnson, Veto of the Civil Rights Act of 1866
       Johnson, Repealer Act Veto Message
       Ex parte McCardle (1869)
       Texas v. White (1869)
   Const:  14th and 15th Amendments
   CP:  The Slaughterhouse Cases (1873)
       Civil Rights Act of 1875
       The Civil Rights Cases (1883)
   Const:  Article I, Sections 8 and 9
       10th Amendment
   CP:  Resolutions of a Meeting of the Illinois State Farmers’ Association
       Munn v. Illinois (1877)
       Wabash, St. Louis & Pacific Railway v. Illinois (1886)
       Brewer, “The Nation’s Safeguard”
       Ely, “The Doctrine of Laissez Faire is Unsafe in Politics and Unsound in Morals”
       Sumner, “The Absurd Effort to Make the World Over”
       Field, “The Centenary of the Supreme Court of the United States”
       Thayer, “Origin and Scope of the American Doctrine of Constitutional Law”
       Populist Party Platform of 1892
       US v. E.C. Knight (1895)
Pollock v. Farmers’ Loan & Trust (1895)
Bryan, “A Cross of Gold”
McC: pp. 67-70, 73-90 (from “The enemies of…”)
CP: Vorenberg, “Bringing the Constitution Back In”

13. Progressive Protections and Laissez-Faire Limitations  (October 20)
Const: 10th Amendment
CP: Champion v. Ames (1901)
McCrory v. US (1904)
Smith, The Spirit of American Government
Croly, The Promise of American Life
Roosevelt, “A Charter of Democracy”
Wilson, “The Meaning of Democracy”
Progressive Party Platform of 1912
Hoke and Economides v. US (1913)
Hill, “The Crisis in Constitutionalism”
Const: 16th-18th Amendments
CP: Hammer v. Dagenheart (1918)
Bailey v. Drexel Furniture (1922)
Progressive Party Platform of 1924
Const: 14th Amendment
CP: Alkasyer v. Louisiana (1897)
Lochner v. New York (1905)
Muller v. Oregon (1908)
Const: 19th Amendment
CP: Adkins v. Children’s Hospital (1923)
Nebbia v. New York (1934)
McC: pp. 91-108

14. The Four Horsemen  (October 24)
Const: Article I, Section 8, Clauses 1 and 3
10th Amendment
CP: Hoover, “Rugged Individualism”
Roosevelt, Commonwealth Club Address
Schechter Poultry v. US (1935)
Roosevelt, Undelivered Speech on the Gold Clause Cases
US v. Butler (1936)
Carter v. Carter Coal (1936)
Roosevelt, Fireside Chat on the Court-Packing Plan
Morehead v. Tipaldo (1936)
McC: pp. 108-113
CP: Irons, “Boys With Their Hair Ablaze” from The New Deal Lawyers

15. You Say You Want a (Constitutional) Revolution…  (October 27)
Const: Article I, Section 8, Clause 3
10th Amendment
CP: West Coast Hotel v. Parrish (1937)
NLRB v. Jones & Laughlin Steel (1937)
Steward Machine v. Davis (1937)
Senate Judiciary Committee Report on Court-Packing Plan
Mencken, “A Constitution for the New Deal”
US v. Darby (1941)
McC: pp. 116-119
CP: Leuchtenburg, excerpts from The Supreme Court Reborn
Cushman, excerpts from Rethinking the New Deal Court

16. Between Clerkship and Despotism (October 31)
Const: Article II
CP: Publius, The Federalist 70 and 71
Presidents on Presidential Power
Myers v. US (1926)
Humphrey’s Executor v. US (1935)
J.W. Hampton v. US (1928)
US v. Curtiss-Wright Export (1936)
Japanese Relocation Order
Korematsu v. US (1944)
Youngstown Sheet & Tube v. Sawyer (1952)
McC: pp. 125-128
CP: Bernstein, “Once Upon a Time, There Was a President…”

17. The Search for Standards (November 3)
Const: Article I, Section 8, Clause 3
10th, 14th, and 15th Amendments
CP: US v. Carolene Products (1938)
Wickard v. Filburn (1942)
Jackson, Memo on Wickard
Southern Pacific v. Arizona (1945)
Dean Milk v. Madison (1951)
Eisenhower, Letter to Edgar Newton Eisenhower
Williamson v. Lee Optical of Oklahoma (1955)
Ferguson v. Skrupa (1963)
Heart of Atlanta Motel v. US (1964)
South Carolina v. Katzenbach (1966)
McC: pp. 120-125, 150-152 (until “Should one look…”)
CP: McCloskey, “Economic Due Process and the Supreme Court”

V. The “Great” Society

18. When Jim Crow Met Uncle Sam (November 7)
Const: Article VI, Clause 2
CP: Publius, The Federalist 78 [from session 6]
Const: 5th and 14th Amendments
CP: US v. Carolene Products – Footnote Four, Paragraph 3 (1938) [from session 17]
Brown v. Board of Education (1954)
Bolling v. Sharpe (1954)
Brown v. Board of Education II (1955)
The Southern Manifesto
Eisenhower, Address to the Nation on the Introduction of Troops in Little Rock

Cooper v. Aaron (1958)

McC: pp. 138-146, 231-233 (until “This outpouring of national…”)

CP: Klarman, “Brown v. Board of Education”
Sunstein, “Did Brown Matter?”

19. The New Bill of Rights (November 10)

CP: Publius, The Federalist 84 [from session 4]

Const: 1st-10th Amendments

CP: Barron v. Baltimore (1833) [from session 7]
Const: 14th Amendment

CP: Palko v. Connecticut (1937)

Adamson v. California (1947)
US v. Carolene Products – Footnote Four, Paragraph 1 (1938) [from session 17]
Engel v. Vitale (1962)
Griswold v. Connecticut (1965)
Miranda v. Arizona (1966)
Brandenburg v. Ohio (1969)
Roe v. Wade (1973)

Goldwater, “Speech Accepting the Republican Presidential Nomination”

McC: pp. 133-138, 147-150, 154-156 (until “Similar latitude…”), 165-169 (until “None of the…”), 186-188

CP: Cortner, excerpts from The Nationalization of the Bill of Rights in Perspective

Glazer, “Towards an Imperial Judiciary”
Powe, “What Was the Warren Court?” from The Warren Court and American Politics

VI. The Conservative Ascendancy

20. Publius Revisited (November 14)

Const: Article I, Section 2, Clauses 1 and 2
Article I, Section 5, Clauses 1 and 2
Article I, Section 7, Clauses 2 and 3
Article II, Section 2, Clause 3

CP: Publius, The Federalist 51 [from session 4]
Powell v. McCormack (1969)
Morrison v. Olson (1988)
INS v. Chadha (1983)
National Labor Relations Board v. Noel Canning (2014)

McC: pp. 217-218 (from “In any event…” to “The period between…”), 202-204, 227-228 (from “Similar questions…” to “Some of the most…”)

CP: Fisher, “Legislative Vetoes After Chadha”
Amar, “The Unimperial Presidency”
Winkler, “Active Liberty Lives!”
Salam, “Gridlock Is Good”

21. The Federalism (In?)Offensive  (November 17)
   Const:  Article I, Section 8
           Article VI, Clause 2
   CP:  Publius, *The Federalist* 39 and 46 [from session 4]
   Const:  10th Amendment
   CP:  *Chisholm v. Georgia* (1793) [from session 5]
   Const:  11th Amendment
   CP:  Reagan, Remarks at the National Conference of State Legislatures
       Reagan, First Inaugural Address
       Clinton, Fourth State of the Union Address
       *Printz v. US* (1997)
       Ginsburg, “Fidelity to the Written Constitution”
       *Gonzales v. Raich* (2005)
   McC:  pp. 205-211, 194-195 (from “As one might expect…”)
   CP:  Rosen, “The Unregulated Offensive”
       Pickerill and Clayton, “The Rehnquist Court and the Political Dynamics of Federalism”
       Stone, “Tea Party Pushes Amendment to Veto Congress”

22. Gush v. Bore—Or, How the Court Learned to Stop Worrying and Embrace the First Rule of Politics  (November 21)
   Const:  Article II, Section 1, Clause 2
           14th Amendment
   McC:  pp. 179-184
   CP:  Margolick, Peretz, and Shnayerson, “The Path to Florida”
       podcast: *This American Life*, “Two Nations, One President” – Prologue, Acts I and IV
       Turow, “A Brand New Game”
       Greve, “The Real Division in the Court”
       Yoo, “In Defense of the Court’s Legitimacy”
       Calabresi, “In Partial (but not Partisan) Defense of Principle”
       Cohen, “Has *Bush v. Gore* Become the Case That Must Not Be Named?”
       Liptak, “*Bush v. Gore* Set to Outlive Its Beneficiary”

23. The Perpetual Threat and the Emergency Constitution  (November 24)
   Const:  Preamble
           Article II
   CP:  Publius, *The Federalist* 23
       *Home Building & Loan Association v. Blaisdell* (1934)
Yoo, “The President’s Constitutional Authority to Conduct Military Operations”
Obama, Remarks on Drone and Counterterrorism Policy
Obama, Remarks on Changes to National Security Agency Programs
McC: pp. 195-202
podcast: This American Life, “Habeas Schmabeas” – Prologue, Act I
CP: Mahler, “Why This Court Keeps Rebuking This President”
Feldman, “When Judges Make Foreign Policy”
podcast: This American Life, “Secret Government” – Act III
CP: Savage and Risen, “Federal Judge Finds N.S.A. Wiretaps Were Illegal”
Lichtblau, “In Secret, Court Vastly Broadens Power of N.S.A”
Brenner, “The FISA Court is Tougher Than the Media Says”
Cohen, “Is the NSA’s Spying Constitutional?”
Savage, “Secret U.S. Memo Made Legal Case to Kill a Citizen”
Goldsmith, “On Target”
Mayer, “Torture and Obama’s Drone Program”
Silverstein, “Obama Just Increased Executive Power—Again”

24. Democracy Divided (December 1)
Const: Article IV, Section 4
1st, 5th, 10th, 14th, and 15th Amendments
CP: US v. Carolene Products – Footnote Four, Paragraph 2 (1938) [from session 17]
Baker v. Carr (1962)
Reynolds v. Sims (1964)
Crawford v. Marion County Election Board (2008)
Shelby County v. Holder (2013)
McC: pp. 157-160, 172-179
CP: Toobin, “Money Unlimited”
Dworkin, “The Decision That Threatens Democracy”
Smith, “Citizens United We Stand”
podcast: This American Life, “Take the Money and Run for Office” – Act III
CP: Bai, “How Much Has Citizens United Changed the Political Game?”
Potter, “The Supreme Court Needs to Get Smarter About Politics”
La Raja, “The McCutcheon Decision Could Be Good News After All”
Stevens, “The Court & the Right to Vote”
Cooper, “After Ruling, States Rush to Enact Voting Laws”

Conclusion

25. Of Institutions and Authority: Structures of Power and the Future of American Constitutionalism (December 5)
Const: Article III
CP: Boerne v. Flores (1997)
McC: pp. 258-284
CP: Murphy, “Who Shall Interpret?”
    Graber, “The Nonmajoritarian Difficulty”
    Whittington, “The Political Foundations of Judicial Supremacy”
    Sunstein, “Leaving Things Undecided” from One Case at a Time
    Pew Research Center, “Supreme Court’s Favorability Edges Below 50%”
    Greenhouse, “Is the Kennedy Court Over?”
    Liptak, “The Roberts Court Comes of Age”
    Liptak, “Roberts Pulls Supreme Court to the Right Step by Step”
    Liptak, “How Activist Is the Supreme Court?”
website: “The Supreme Court Justice Death Calculator” (Slate.com)