

Govt4306
Constitutional Law:
The Grant of Powers to the Federal Government

1. Course Number and Name: Govt4306, Constitutional Law: The Grant of Powers to the Federal Government

Prerequisites: Govt4201, Origins of the Constitution and Hist4101, U.S. History to 1800.

Credits: 3

2. Course Description: Courses in constitutional law are generally divided into two parts. Part one usually deals with the powers of the American governments—the separation of powers among the three branches of the national government and the distribution of powers between the national and state governments. Part two deals with the restrictions on governmental authority over individuals effected by the constitution and particularly the Bill of Rights and the Fourteenth Amendment.

Govt4306 represents the first part of this division and concentrates on disputes over the constitutional powers of our state and federal governments that have been settled by American courts, particularly the United States Supreme Court.

3. Course Goals: This course introduces students to the role of the federal judiciary in American government and provides a survey of the principal decisions of constitutional law that have influenced the development of the American polity. Students will learn methods of analyzing and evaluating judicial opinions and will learn some of the legal concepts and doctrines relating to the allocation of powers among the three branches of the federal government and between the federal and state governments.

4. Course Learning Outcomes: Students who complete this course will able to:

1. Compose brief synopses (“case briefs” or “briefs”) of court opinions that identify the issues, holdings, and rationales in the opinions.

2. Identify these judicial rules:

ripeness,
mootness,
standing to sue, and
political question

3. Trace the development of those judicial rules in Supreme Court decisions since the mid-nineteenth century.

4. Identify the rules and principles that define:

the constitutional doctrines of the implied powers of government,
the inherent powers of the national government, and
the incidental or auxiliary powers of the branches of government

5. Trace the development of these judicial rules and principles in Supreme Court decisions throughout U.S. history.

6. Identify the constitutional doctrines relating to Congress, such as the doctrine of the non-delegation of legislative power, the interpretation of the Necessary and Proper Clause, the interpretations over the years of the Commerce Clause, and the protections afforded members of Congress and their aides by the Speech or Debate Clause, and trace the development of these doctrines in Supreme Court cases throughout U.S. history.

7. Identify the constitutional doctrines relating to the President of the United States, such as the President's appointment and removal power, the President's constitutional power in foreign affairs and in times of war, President George W. Bush's application of those powers during his tenure in office, and the protections afforded Presidents and their aides by the judicially-created doctrines of executive immunity and executive privilege and trace the development of these doctrines in Supreme Court decisions.

8. Trace the changing constitutional relationship between the national and the states' governments throughout American history through the differing interpretations in Supreme Court decisions of constitutional doctrines and provisions such as the doctrine of dual federalism, the federal regulatory power under the Commerce Clause, the state regulatory power under the police power and the negative or dormant Commerce Clause, the Eleventh Amendment, and the Reconstruction Amendments.

9. Identify the principal limitations of governmental power over private property as reflected in the court's interpretations of the Contract Clause, the doctrine of liberty of contract, and the concept of the governmental taking of property.

10. Apply the aforementioned rules, principles, and doctrines to hypothetical and realistic sets of facts by identifying the constitutional issue and principle presented by a particular factual situation, stating the rule accurately, and reasoning logically and plausibly from the rule to a resolution of the issue presented by the facts.

5. Course Concepts: The following legal and constitutional concepts are the focus of Govt4306:

1. Court opinions and Judgments—issues, holdings, rules and principles, majority opinions, plurality opinions, concurring opinions, dissenting opinions, opinions concurring in the judgment, case citations.

2. Court jurisdiction, doctrines of justiciability, the doctrine of judicial review.

3. Governmental powers—enumerated, implied, inherent, and incidental powers, immunity and privilege.

4. The powers of Congress and their limits—the delegation of legislative power doctrine, the Necessary and Proper Clause, the Speech or Debate Clause, incidental powers.

5. The powers of the President—the appointment and removal power, the pardon power, the powers of the President in foreign affairs and war, executive immunity and privilege, incidental powers.

6. The powers of the national government vis a vis the states—the doctrine of dual federalism, the powers of Congress under the Commerce Clause, the Eleventh Amendment, the taxing and spending power.

7. The powers of the states in the federal system—the state police powers, the negative or dormant Commerce Clause, preemption doctrine.

8. The powers of the governments over private property and economic liberties—the Contract Clause, the doctrine of liberty of contract, the taking of property.

6. Required Texts:

Craig R. Ducat. *Constitutional Interpretation: Powers of the Government*. Volume One, 9th ed. Wadsworth, 2008. ISBN-13: 9780495503231.

7. Recommended Readings:

Henry Abraham. *Justices, Presidents and Senators: A History of U.S. Supreme Court Appointments from Washington to Bush II*. Rowman and Littlefield, 2007. ISBN-10: 0742558959 ISBN-13: 978-0742558953

George Anastaplo. *Abraham Lincoln: A Constitutional Biography*. Rowman and Littlefield, 2001. ISBN-10: 0847694321 ISBN-13: 978-0847694327

John Nowak and Ronald Rotunda. *Constitutional Law*. 7th ed. West, 2004. ISBN-10: 0314144528 ISBN-13: 978-0314144522

Bernard Schwartz. *A History of the Supreme Court*. Oxford University Press, 1995. ISBN-10: 0195093879 ISBN-13: 978-0195093872

8. Additional Resources:

Complete copies of Supreme Court and other court opinions are available on the Internet via several free sites. Students may be asked to register for some of the sites, but there is no charge or obligation. Some of the sites have useful search capabilities. A list of some of the most useful for students of constitutional law follows:

www.findlaw.com A broad legal resource site sponsored by Thomson and West publishing group. This is especially useful for Supreme Court opinions through the 1980s. Use the tab "For Legal Professionals" on the main webpage.

www.lexisone.com A narrower site sponsored by Thomson/West's chief rival in legal publishing, Lexis-Nexis. This site is more useful for recent Supreme Court decisions.

www.supremecourtus.gov The official public website of United States Supreme Court. No registration required. This site is particularly useful for up-to-the-minute publication of new Supreme Court opinions (though the site only makes them available for about a year) and for information about the litigation process at the Supreme Court.

<http://supct.law.cornell.edu/supct> The site sponsored by the Legal Information Institute of Cornell University Law School. The site is particularly useful for locating recent Supreme Court opinions, for identifying the legal issues and arguments in Supreme Court cases before and after the cases are argued, and for a wide range of legal and legal procedure information.

www.oyez.org A flashy site titled "U.S. Supreme Court Media" and featuring audio recordings of the arguments in many cases since 1955.