

PS-105: Constitutional Law Spring 2019

Professor: Miranda Yaver
Email: miranda.yaver@tufts.edu
Class Time: Tuesday/Thursday 3-4:15pm
Office Hours: Thursday 12:30-2:30pm or by appointment
Office Location: 309 Packard Hall

Course Description:

“It is emphatically the province and the duty of the judicial department to say what the law is.” – John Marshall, *Marbury v. Madison* (1803)

This course is designed to provide a broad introduction to American constitutional law and how it functions in the separation-of-powers system. After a brief introduction to the nation’s founding principles and the role of the Supreme Court, students will be introduced to the following dimensions of constitutional law jurisprudence: speech, religion, privacy, equal protection, Commerce Clause, and presidential powers. We will discuss such questions as, What are the limits of free speech? What constitutes an impermissible encroachment on free exercise of religion? Does the Equal Protection Clause imply a preclusion of affirmative action policies? What is the proper scope of federal versus state regulation under the Interstate Commerce Clause? What power does the president have in wartime? Landmark Supreme Court case excerpts will be supplemented with contemporary examples of case application and constitutional debates. Class debates and fact pattern response papers will help students to sharpen their understanding of the complex jurisprudential debates and develop persuasive arguments about the law. Students will be expected to participate actively in class discussions and activities. Readings are subject to change, and students will be alerted to which readings become recommended (or else skim-worthy) rather than required.

Course Requirements:

- Four short papers on fact patterns (approximately 5 page, double-spaced, 12-point font, submitted through Canvas by the start of class): 15% each
 1. Freedom of speech (February 26)
 2. Reproductive freedom (Due March 12)
 3. Voting rights (Due April 2)
 4. Commerce Clause (Due April 18)
- Final Exam: 25%
 - Students will have 72 hours to do a take-home (open-book, open-note) final exam comprised of a set of short essay questions and one longer essay question.
- Attendance and participation in class: 15%

Final Course Grading: The final grade for the course will be assigned based on the following scale:

A: 93+%	A-: 90-92%	B+: 87-89%
B: 83-86%	B-: 80-82%	C+: 77-79%
C: 73-76%	C-: 70-72%	D+: 67-69%
D: 63-66%	D-: 60-62%	F: > 60%

Policy Regarding Late Assignments: It is imperative that students turn in work at the specified deadlines. Failure to do so will result in a third letter grade reduction per day late unless you have received an extension in advance. Work will not be accepted at all more than one week late unless said extension was granted in advance. All students take the final exam at the assigned day and time, with the only exception of university-approved absences. If you have concerns regarding your ability to complete your work on time due to physical or mental health reasons, you are encouraged to seek appropriate treatment from campus services (<http://students.tufts.edu/health-and-wellness>) and to discuss with me *in advance* whether an extension is needed.

All members of the academic community should be able to engage fully in the academic opportunities and services provided, regardless of disability status, and to that end accommodations to this course can be made if necessary (<http://students.tufts.edu/student-accessibility-services>). Please feel free to discuss with me any concerns you may have.

Statement on Academic Integrity: It is expected that all students will work in accordance with the student honor code. Thus, plagiarism, cheating, and receiving unauthorized assistance with the work in this course will not be tolerated. Should a student violate academic integrity in this class, the matter will be reported to the university administration. If you have questions about citations of sources, ask prior to submitting the given assignment. Students are encouraged to consult Writing Support services (<https://students.tufts.edu/academic-advice-and-support/academic-resource-center/what-we-offer/writing-support>) for additional assistance on writing and citation so as to avoid plagiarism.

I reserve the right to prohibit the use of laptops in class if they prove to be an impediment to active class participation.

Textbooks

The following textbooks are required:

- *Constitutional Law and Politics: Civil Rights and Liberties, 10th edition*, by David O'Brien. Abbreviated on syllabus as O'Brien I.
- *Constitutional Law and Politics: Struggles for Power and Governmental Accountability, 8th edition*, by David O'Brien. Abbreviated on syllabus as O'Brien II.

The following textbooks are recommended:

- Brett Schneider, Corey. 2018. *The Oath and the Office: A Guide to the Constitution for Future Presidents*. W. W. Norton & Company.

- Chafetz, Josh. 2018. *Congress's Constitution: Legislative Authority and the Separation of Powers*. Yale University Press.
- Epstein, Lee & Thomas G. Walker, eds. 2014. *Constitutional Law for a Changing America: A Short Course*. CQ Press.
- Segall, Eric. 2018. *Originalism as Faith*. Cambridge University Press.
- Silverstein, Gordon. 2009. *Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics*. Cambridge University Press
- Tribe, Laurence and Joshua Matz. 2014. *Uncertain Justice: The Roberts Court and the Constitution*. Henry Holt and Co.
- Whittington, Keith. 2001. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Harvard University Press.

You may use different editions to the constitutional law casebooks, but page numbers correspond to the editions listed on the syllabus. All other readings will be made available online. Students will be expected to come to class having read the material and being prepared to engage in the arguments that they present. Students will be alerted in advance to what readings are recommended rather than required, or are skim-worthy. It is imperative that students check their email regularly, as that is how class announcements will be made.

Useful websites on law and the Supreme Court:

- <https://www.oyez.org/>
- <https://www.supremecourt.gov/>
- <http://www.scotusblog.com>
- <https://www.lawfareblog.com/>
- <http://electionlawblog.org/>
- <https://abovethelaw.com/>
- <https://constitutioncenter.org/>

Useful podcasts on law and the Supreme Court: What Trump Can Teach Us About Con Law, First Mondays, We the People, At Liberty, Amicus

Course Outline:

Thursday, January 17: Course Introduction

- United States Constitution

Tuesday, January 22: Introduction to American Politics, Separation of Powers,, and Judicial Review

- *Federalist 10, 51, 78*
- O'Brien II, pp. 45-55: *Marbury v. Madison* (1803)
- Murrill, Brandon J. 2018. CRS Report: The Supreme Court's Overruling of Constitutional Precedent
- Optional readings:
 - Segal, Jeffrey A. and Harold J. Spaeth. "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices." *American Journal of Political Science* 40(4).
 - Chafetz, *Congress's Constitution*, Introduction, Prelude, Ch. 2

Thursday, January 24: Theories of Constitutional Interpretation

- Segall, Eric. 2017. "Judicial Originalism as a Myth." *Vox*.
- Hollis-Brusky, Amanda. 2016. "Here's why originalism won't be buried with Scalia." *The Washington Post Monkey Cage*.
- Roosevelt, Kermit. 2007. "Originalism and the Living Constitution: Reconciliation." *American Constitution Society for Law and Policy*.
- Optional readings:
 - Reid, Brad. 2016. "Fourteen Ways to Interpret the Constitution." *Huffington Post*.
 - Chafetz, *Congress's Constitution*, Ch. 1

Tuesday, January 29: Establishment Clause and School Prayer

- Madison, James. "Memorial and Remonstrance" (1785)
- O'Brien I, pp. 698-717, "The (Dis)Establishment of Religion"
- O'Brien I, pp. 723-727: *Engel v. Vitale* (1962)
- O'Brien I, pp. 727-730: *Abington School District v. Schempp* (1963)
- O'Brien I, pp. 745-749: *Lee v. Weissman* (1984)
- Optional reading:
 - O'Brien I, pp. 735-42: *Wallace v. Jaffree* (1985)

Thursday, January 31: Establishment Clause

- O'Brien I, pp. 730-735: *Lemon v. Kurtzman* (1971)
- *Trump v. Hawaii* (2018) (excerpt online)
- "Symposium: What might *Trump v. Hawaii* portend for states in establishment clause cases?" *SCOTUSBlog*

- “Shifting Boundaries: The Establishment Clause and Government Funding of Religious Schools and Other Faith-Based Organizations.” 2009. *Pew Research Center*.
- Kritzer, Herbert & Mark Richards. 2003. “Jurisprudential Regimes and Supreme Court Decisionmaking: The Lemon Regime and Establishment Clause Cases.” *Law & Society Review* 37(4). (skim)
- Optional readings:
 - O’Brien I, pp. 753-59: *Zelman v. Simmons-Harris* (2002)
 - O’Brien I, pp. 766-73: *McCreary v. American Civil Liberties Union of Kentucky* (2003)
 - *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017)

Tuesday, February 5: Free Exercise Clause

- O’Brien I, pp. 787-797, 801-804, “Free Exercise of Religion”
- O’Brien, pp. 804-807: *Wisconsin v. Yoder* (1972)
- O’Brien I, pp. 808-815: *Employment Division v. Smith* (1990)
- O’Brien I, pp. 815-821: *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993)
- Optional reading:
 - O’Brien I, pp. 821-27: *City of Boerne v. Flores* (1997)

Thursday, February 7: Free Exercise Clause & Religious Freedom Restoration Act

- *Burwell v. Hobby Lobby Stores, Inc.* (2014) (excerpt online)
- *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018) (excerpt online)
- Luchenitser, Alex. 2015. “A New Era of Inequality: *Hobby Lobby* and Religious Exemptions from Anti-Discrimination Laws ” *Harvard Law and Policy Review*. 9(63).
- Optional reading:
 - Chemerinsky, Erwin & Michele Goodwin. 2016. “Compulsory Vaccinations Are Constitutional.” *Northwestern University Law Review*

Tuesday, February 12: Freedom of Speech

- O’Brien I, pp. 634-638, 662-663, “Symbolic Speech and Speech-Plus-Contact”
- O’Brien I, pp. 495-503: “Fighting Words and Offensive Speech”
- O’Brien I, pp. 426-428: *Schenck v. United States* (1919)
- O’Brien I, pp. 645-649: *Tinker v. Des Moines* (1969)

- Fernandez Campbell, Alexis. “Students have a right to protest gun violence, but they can’t disrupt class.” *Vox*, March 14, 2018
- Optional readings:
 - O’Brien I, pp. 428-33: *Gitlow v. New York* (1925)
 - O’Brien I, pp. 433-43: *Dennis v. United States* (1951)
 - *Cantwell v. Connecticut* (1940)
 - *Chaplinsky v. New Hampshire* (1942)
 - *Watts v. United States* (1969)

Thursday, February 14: Freedom of Speech

- O’Brien I, pp. 443-453: *Brandenburg v. Ohio* (1969)
- Lind, Dara. 2017. “Why the ACLU is adjusting its approach to ‘free speech’ after Charlottesville.” *Vox*.
- O’Brien I, pp. 653-659: *Texas v. Johnson* (1989)
- Lewis, Nicole. 2017. “The NFL and the First Amendment: A Guide to the Debate.” *The Washington Post*.
- O’Brien I, pp. 454-460, “Obscenity, Pornography, and Offensive Speech”
- O’Brien I, pp. 468-472: *Miller v. California* (1973)
- Optional readings:
 - Sunstein, Cass. 1986. “Pornography and the First Amendment.” *Duke Law Journal* 589.
 - O’Brien I, pp. 462-65: *Roth v. United States* (1957)
 - *United States v. O’Brien* (1968)
 - O’Brien I, pp. 490-95: *Ashcroft v. Free Speech Coalition* (2002)
 - *United States v. Stevens* (2010)
 - O’Brien I, pp. 482-90: *Reno v. ACLU* (1997)
 - *FCC v. Pacifica Foundation* (1978)
 - O’Brien I, pp. 650-53: *Morse v. Frederick* (2007)

Tuesday, February 19: Money and Speech

- O’Brien II, pp. 929-39: *Buckley v. Valeo* (1976)
- O’Brien II, pp. 968-79: *Citizens United v. FEC* (2010)
- *Citizens United v. FEC*, in Plain English, SCOTUSBlog

- Levitt, Justin. 2010. “Confronting the Impact of *Citizens United*.” *Yale Law & Policy Review* 29(1).
- Abdul-Razzak, Nour, Carlo Prato, and Stephane Wolton. “How *Citizens United* gave Republicans a bonanza of seats in U.S. state legislatures.” *The Washington Post, Monkey Cage*, February 24, 2017.
- Optional readings:
 - O’Brien II, pp. 943-59: *McConnell v. Federal Election Commission* (2003)
 - O’Brien II, pp. 959-68: *Federal Election Commission v. Wisconsin Right to Life* (2007)
 - *Austin v. Michigan Chamber of Commerce* (1990)

Thursday, February 21: Monday schedule → no class

Tuesday, February 26: Fourth Amendment

- O’Brien I, pp. 832-841, “The Fourth Amendment Guarantee”
- O’Brien I, pp. 978-983, “The Exclusionary Rule”
- O’Brien I, pp. 983-991: *Mapp v. Ohio* (1961)
- *New Jersey v. T.L.O* (1984)
- *Pottawatomie v. Earls* (2002)
- O’Brien I, pp. 972-976, “The USA Patriot Act”
- Rozenshtein, Alan Z. “Fourth Amendment Reasonableness After *Carpenter v. United States*.” *Lawfare blog*, December 27, 2018
- Optional readings:
 - Posner, Richard. 2008. “Privacy, Surveillance, and Law.” 75 *University of Chicago Law Review* 245.
 - Bomboy, Scott. 2014. “A legal victory for drones warrants a Fourth Amendment discussion.” The Constitution Center.
 - O’Brien I, pp. 978-79: *Weeks v. United States* (1914)
 - *Olmstead v. United States* (1928)
 - *United States v. Jones* (2012)
 - *Carpenter v. United States* (2018)

Thursday, Tuesday, 28: Privacy and Reproductive Rights

- Murray, Melissa. 2015. “Overlooking Equality on the Road to *Griswold*.” *Yale Law Journal* 124.
- O’Brien I, pp. 1228-1239, 1254-1258, “Privacy and Reproductive Freedom”

- O'Brien I, pp. 341-352: *Griswold v. Connecticut* (1965)
- O'Brien I, pp. 1242-1250: *Roe v. Wade* (1973)
- Greenhouse, Linda and Reva Siegel. 2011. "Before (and After) *Roe v. Wade*: New Questions About Backlash." *The Yale Law Journal* 120(8).
- Optional reading:
 - O'Brien I, pp. 1240-41: *Buck v. Bell* (1927)

Tuesday, March 5: Privacy and Reproductive Rights Since *Roe*

- O'Brien I, pp. 1261-1273: *Planned Parenthood v. Casey* (1992)
- O'Brien I, pp. 1282-88: *Whole Woman's Health v. Hellerstedt* (2016)
- Wharton, Linda, Susan Frietsche, and Katherine Kolbert. 2006. "Preserving the Core of *Roe*: Reflections on *Planned Parenthood v. Casey*." *18 Yale Journal of Law and Feminism*.
- North, Anna. 2018. "How Trump helped inspire a wave of strict new abortion laws." *Vox*.
- Optional readings:
 - *Webster v. Reproductive Health Services* (1989)
 - O'Brien I, pp. 535-40: *Rust v. Sullivan* (1991)
 - O'Brien I, pp. 1273-81: *Gonzales v. Carhart* (2007)

Thursday, March 7: Equal Protection and Desegregation

- O'Brien I, pp. 1322-1331, "Equal Protection of the Laws"
- O'Brien I, pp. 1332-1346, "Racial Discrimination and State Action"
- O'Brien I, pp. 1361-67: *Civil Rights Cases* (1883)
- O'Brien I, pp. 1368-1372: *Plessy v. Ferguson* (1896)
- Optional reading:
 - Kruse, Kevin M. *White Flight*, Ch.5: "The 'Second Battle of Atlanta': Massive Resistance and the Divided Middle Class."

Tuesday, March 12: Equal Protection and Education

- O'Brien I, pp. 1378-1389, "Racial Discrimination in Education"
- O'Brien I, pp. 1391-1402: *Brown v. Board of Education* (1954)
- O'Brien I, pp. 1411-1415: *Milliken v. Bradley* (1974)
- Chen, Michelle. "Millennials Have Lived Through a Doubling of School Segregation." *The Nation* (June 15, 2016)

- Rosenberg, Gerald. “Substituting Symbol for Substance: What Did *Brown* Really Accomplish?” *PS*, April 2004.
- Southern Manifesto
- Optional readings:
 - O’Brien I, pp. 1402-03: *Bolling v. Sharpe* (1954)
 - O’Brien I, pp. 1407-11: *Cooper v. Aaron* (1958)
 - *Swann v. Charlotte-Mecklenburg Board of Education* (1970)
 - O’Brien I, pp. 1419-30: *Parents Involved in Community Schools v. Seattle School District No. 1* (2007)
 - O’Brien I, pp. 1464-67: *Adarand Constructors, Inc. v. Peña* (1995)
 - O’Brien I, p. 1443-50: *Regents of the University of California v. Bakke* (1978)
 - O’Brien I, pp. 1472-80: *Grutter v. Bollinger* (2003)
 - O’Brien I, pp. 1467-72: *Gratz v. Bollinger* (2003)
 - O’Brien I, pp. 1492-96: *Fisher v. UT Austin* (2016)
 - Estlund, Cynthia L. 2005. “Putting *Grutter* to Work: Diversity, Integration, and Affirmative Action in the Workplace.” *Berkeley Journal of Employment and Labor Law* 26(1): 1.

Thursday March 14: Voting Rights

- O’Brien II, pp. 856-65: “Voting Rights and the Reapportionment Revolution”
- Voting Rights Act of 1965
- *Shelby County v. Holder* (2012) (excerpt online)
- Tolson, Franita. 2014. “The Constitutional Structure of Voting Rights Enforcement.” 89 *Washington Law Review* 379. (2014).
- Optional readings:
 - O’Brien I, pp. 157-67: *Baker v. Carr* (1962)
 - *Abbott v. Perez* (2018)
 - Karlan, Pamela. 2004. “Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement.” 56 *Stanford Law Review* 1147.
 - Hasen, Rick. 2018. “‘Civil Right No. 1:’ Dr. King’s Unfinished Voting Rights Revolution.” *University of Memphis Law Review*.

Tuesday, March 26: Voting Rights: The Impact of *Shelby County v. Holder*

- Persily, Nathaniel and Thomas Mann. 2013. “*Shelby County v. Holder* and the Future of the Voting Rights Act.” *The Brookings Institution*.
- “*Shelby County* One Year Later.” The Brennan Center. 2014.

- Elmendorf, Christopher S. and Douglas M. Spencer. 2015. “Administering Section 2 of the Voting Rights Act After *Shelby County*.” *Columbia Law Review* 115(8).
- Ford, Matt. “How the Roberts Court Caused Georgia’s Election Mess.” *The New Republic*, November 5, 2018.
- Optional reading:
 - Hasen, Rick. 2016. “Softening Voter ID Laws Through Litigation: Is it Enough?” *Wisconsin Law Review* 100.

Thursday, March 28: Equal Protection and Gender-Based Discrimination

- O’Brien I, pp. 1496-1501: “Gender-Based Discrimination.”
- O’Brien I, pp. 1502-06: *Frontiero v. Richardson* (1973)
- O’Brien I, pp. 1506-10: *Craig v. Boren* (1976)
- Williams, Wendy Webster. 2013. “Ruth Bader Ginsburg’s Equal Protection Clause.” *Columbia Journal of Gender and Law* 25: 41-49.
- O’Brien I, pp. 1525-27: “Discrimination Against the LGBTQ Community”
- O’Brien I, pp. 1546-70: *Obergefell v. Hodges* (2015)
- Rosen, Jeffrey. “The Dangers of a Constitutional ‘Right to Dignity.’” *Atlantic*, April 29, 2015.
- Optional readings:
 - Ginsburg, Ruth Bader. 1975. “Gender and the Constitution.” *University of Cincinnati Law Review* 44(1): 1.
 - Siegel, Reva. 1992. “Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection.” *Stanford Law Review* 44(2): 261.
 - Murray, Melissa. 2016. “*Obergefell v. Hodges* and Nonmarriage Inequality.” 104 *California Law Review* 1207.
 - O’Brien I, pp. 1514-25: *United States v. Virginia* (1996)
 - O’Brien I, pp. 1528-38: *Romer v. Evans* (1996)
 - O’Brien I, pp. 1296-1307: *Lawrence v. Texas* (2003)
 - Murray, Melissa. 2016. “Rights and Revolution: The Evolution of Sexual Regulation.” *Columbia Law Review*
 - O’Brien I, pp. 1538-46: *United States v. Windsor* (2012)

Tuesday, April 2: Commerce Clause and Federalism

- O’Brien II, pp. 589-93: “From the New Deal Crisis to the Administrative State”
- O’Brien II, pp. 692-97, 714-31: “States’ Power Over Commerce and Regulation”

- O'Brien II, pp. 595-601: *NLRB v. Jones & Laughlin Steel Corporation* (1937)
- O'Brien II, pp. 606-09: *Wickard v. Filburn* (1942)
- Bulman-Pozen, Jessica. 2012. "Federalism as a Safeguard of the Separation of Powers." 112 *Columbia Law Review* 459.
- Optional readings:
 - Schiller, Reuel E. 2007. "The Era of Deference: Courts, Expertise, and the Emergence of New Deal Administrative Law." *Michigan Law Review* 106(3).
 - O'Brien II, pp. 580-85: *United States v. E.C. Knight Company* (1895)
 - *Swift & Company v. United States* (1905)
 - *Shreveport Rate Cases* (1914)
 - O'Brien II, pp. 585-89: *Hammer v. Dagenhart* (1918)
 - O'Brien II, pp. 434-39: *Schechter Poultry Corporation v. United States* (1935)
 - *Carter v. Carter Coal Company* (1936)
 - O'Brien II, pp. 602-05: *US v. Darby* (1941)

Thursday, April 4: Commerce Clause and Civil Rights

- O'Brien II, pp. 609-14: *Heart of Atlanta Motel, Inc. v. United States* (1964)
- O'Brien II, pp. 614-18: *Katzenbach v. McClung* (1964)
- Schwinn, Steven. 2014. "Civil Rights Act of 1964: Enduring and Revolutionary." *American Bar Foundation*.
- Melnick, Shep. 1996. "Federalism and the New Rights." *Yale Law & Policy Review* 14(2).

Tuesday, April 9: Commerce Clause and New Federalism

- Forte, David. 2011. "Commerce, Commerce, Everywhere: The Uses and Abuses of the Commerce Clause." The Heritage Foundation.
- Dinan, John. 2009. "The Rehnquist Court's Federalism Decisions in Perspective." *Journal of Law and Politics* 15: 127-94.
- Cross, Frank and Emerson Tiller. 2000. "The Three Faces of Federalism: An Empirical Assessment of Supreme Court Federalism Jurisprudence." *Southern California L. Rev.* 73(741).
- O'Brien II, pp. 618-30: *United States v. Lopez* (1995)
- O'Brien II, pp. 644-56: *United States v. Morrison* (2000)
- Optional readings:
 - Chafetz, *Congress's Constitution*, Ch. 3
 - O'Brien II, pp. 744-57: *Garcia v. San Antonio Metro-Transit Authority* (1985)

- Huberfeld, Nicole. 1997. “The Commerce Clause Post-Lopez: It’s Not Dead Yet.” 28 *Seton Hall Law Review* 182.

Thursday, April 11: Commerce Clause and Health Care

- O’Brien II, pp. 656-65: *Gonzales v. Raich* (2005)
- Rosenbaum, Sara. 2005. “*Gonzales v. Raich*: Implications for Public Health Policy.” *Public Health Reports* 120(6).
- *National Federation of Independent Business v. Sebelius* (2012) (excerpt online)
- Posner, Richard. 2012. “Affordable Care Act upheld: Why the Commerce Clause should have been enough.” *Slate*.
- Optional readings:
 - Hall, Mark A. 2011. “Commerce Clause Challenges to Health Care Reform.” *University of Pennsylvania Law Review* 159(6).
 - Gluck, Abbe and Nicole Huberfeld. 2018. “What Is Federalism in Health Care For?” 70 *Stan. L. Rev.*

Tuesday, April 16: National Security and the Emergency Powers of the President

- O’Brien II, pp. 346-51: “The President as Chief Executive in Domestic Affairs”
- O’Brien II, pp. 353-68: *Youngstown Sheet & Tube Co. v. Sawyer* (1952)
- O’Brien II, pp. 368-77: *New York Times v. United States* (1971)
- O’Brien II, pp. 378-79: “The National Security Agency’s Warrantless Electronic Surveillance”
- Brettschneider, Corey, *The Oath and the Office*, Ch.1, “Article II and the Limited Presidency.”

Thursday, April 18: Presidential Powers, Appointments/Removal, and Immunity in the Separation of Powers System

- O’Brien II, p. 468-79: *United States v. Nixon* (1974)
- O’Brien II, pp. 408-25: *Morrison v. Olson* (1989)
- O’Brien II, pp. 482-86: *Clinton v. Jones* (1997)
- Vladeck, Steve. 2018. “Kavanaugh, Mueller and Efforts to Have it Both Ways on Morrison.” *Lawfare Blog*
- Yoo, John. “Whitaker’s Appointment is Unconstitutional.” *The Atlantic*, November 13, 2018.
- Optional readings:
 - Chafetz, Josh. *Congress’s Constitution*, Ch. 5.
 - *Myers v. United States* (1926)

- O’Brien II, pp. 452-63: *Clinton v. City of New York* (1998)
- *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010)
- *National Labor Relations Board v. Canning* (2013)
- Tribe, Laurence, Richard Painter, and Norman Eisen. “No, Trump can’t pardon himself. The Constitution tells us so.” *The Washington Post*, July 21, 2017.

Tuesday, April 23: War-Making and Emergency Powers

- O’Brien II, pp. 273-87: “War-Making and Emergency Powers”
- O’Brien II, pp. 298-307: *Korematsu v. United States* (1944)
- *Hamdi v. Rumsfeld* (2004)
- *Hamdan v. Rumsfeld* (2006)
- Fisher, Louis. 2005. “Judicial Review of the War Power.” *Presidential Studies Quarterly* 35(3).
- Tushnet, Mark. 2007. “The Political Consequences of Emergency Powers: Some Lessons from *Hamdan*.” *Minnesota Law Review*.

Thursday, April 25: Finish Emergency Powers, Course Wrap-Up

- Silverstein, Gordon. 2009. “The Law: Bush, Cheney, and the Separation of Powers: A Lasting Legal Legacy?” *Presidential Studies Quarterly*.
- Jurecic, Quinta and Benjamin Wittes. “Is America on the Verge of a Constitutional Crisis?” *The Atlantic*, March 17, 2018.
- Chafetz, Josh. *Congress’s Constitution*, Conclusion. (recommended)

72-hour take-home final exam due at end of university-designated exam period (May 8th, 9pm)