

January 15, 2008

To My Students,

Welcome to PSC 310. We will meet on Tuesdays and Thursdays from 4:00 p.m. to 5:50 p.m. in MC307B. I'm delighted to teach you and help you learn the subject of U.S. Constitutional Law. It's a difficult one, as you might expect. Of course, we know how important the subject is. It's no accident that there has been such a battle over judicial nominations in recent years. The Supreme Court takes on the most contentious constitutional issues—from Presidential power over Guantanamo prisoners, State power to restrict abortion, Congressional power to develop national policy in the area of gun possession, to U.S. Supreme Court power to interfere with the decisions of the elected institutions, whether of the federal government or of the states. Our focus, this term, is primarily upon the boundaries of power among the three branches of the federal government and the boundaries of power dividing the federal government and the states. Incidentally, why do we study "law" in a political science course? How does "law" differ from "politics"? Or does it? Does one morph into the other? Does one have an impact upon the other?

The CSU political science catalog, as you may know, provides, "**PSC 310: Constitutional Law. Basic principles of the United States Constitution, including judicial review, separation of powers, and the powers of the presidency and Congress, and federalism, introduction to individual rights and liberties, including right to privacy and the right of criminal defendants.**"

Our job is to work hard to understand these ideas, and to get excited as we read, study, and ponder them. Expect to be frustrated and confused at the beginning. But I know we will all do our best to gain confidence in our knowledge of the subject as the term progresses.

Our text will be by **Lee Epstein and Thomas G Walker. It's Constitutional Law for a Changing America—Institutional Powers and Constraints. 6th Ed. (2007)**. The authors have won a number of awards for it. I'll also be giving you handouts, including materials from their text, "Constitutional Law for a Changing America—Rights, Liberties, and Justice, 6th Edition (2007).

Attendance and Preparation. If you have (1) **any combination of more than three**, unexcused absences **or unexcused failures to prepare, or** you have (2) **one or more** unexcused absences from exams, **or** you (3) engage in **improper** laptop use **or other distraction** during class, I reserve the right to lower your grade. **Conversely, if you make excellent contributions in class**, I reserve the right to raise your grade.

Examinations. There will be two midterms and one final examination.

There will be a midterm exam worth 20 points on February 12, covering materials and lectures from Jan. 15 through Feb. 5).

There will be a midterm exam worth 30 points on March 25, covering materials and lectures from February 7 through March 18).

There will be a **cumulative** final exam worth 50 points on Tuesday, May 6. (4:00 p.m.-6 p.m.).

Office Hours: Tuesdays and Thursdays: 2:30 p.m.-3:30 p.m., and by appointment.

I have **2** offices on campus: Law School, Rm. 159 (687-2331). Political Science Office RT 1743.

Make sure you know which office we'll be meeting in.

Sincerely,

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Tentative Syllabus:

January 15. Introduction. What interests you about U.S. Constitutional Law? What do you suppose interests me about the subject? Think about those questions. What are the course ground rules? Our responsibilities as we approach this important subject? Think about how I can help you grasp the subject. Think about how constitutional “law” and constitutional “politics” are different but very much interconnected. **What should you be looking for as you study the materials? What questions should you be answering?**

January 17. Text 1-11, 13-27. The Federal judiciary. What are the powers of the federal courts? the U.S. Supreme Court in particular? The powers of the state courts?

January 22. Text 27-50. Some approaches in interpretation. We want “workable” government. To achieve what goals? Liberty? Equality? Democracy? (What does the U.S. Constitution’s preamble say about goals?). We also want a division of powers among the three federal branches. (We call that division of powers among the three federal branches, “**separation of powers**”). Why do we want such a division of powers? We also want each of the federal branches to have “**checks and balances,**” vis-à-vis the other two branches. Why? “**Federalism**” relates to the division of powers between the states and federal government. We’ll be considering the “**reserved**” powers of the states (and their limits), as well as the powers of the federal government. Generally, the federal government’s powers are either 1) listed (i.e.. **enumerated**) (See, e.g., Article I, section 8 as to much of Congress’s powers or 2) **reasonably implied**. 3) There is another theory of federal government power, a much more controversial one, “**inherited power.**” (See United States v. Curtiss-Wright).

Generally, the states’ powers are what is left of the pie of governmental power, (i.e.” “**reserved**” to the states,” (See the Tenth Amendment) if not otherwise forbidden (See, e.g., Article I, Section 10, as to what the states are specifically forbidden to do). We’ll be talking about how a person goes about interpreting the U.S. Constitution in specific situations too.

January 24. Text 55-60, 62-68, 68-76. Separation of powers and checks and balances. The federal judiciary, and the U.S. Supreme Court in particular. If our subject is “(U.S.) Constitutional Law, why do we spend so much time looking at the U.S. Supreme Court? Shouldn’t we spend most of our time looking at what the U.S. Constitution “says,” rather than what one Court says it means? **Marbury v. Madison** is one of the great decisions of the Supreme Court? What are the facts? The issues? The decisions on the issues? The ultimate decision? (Who wins and who loses?). The reasoning? Who is John Marshall and why is he important?

January 29. Text 76-94. What is **judicial review**? Is it an example of “checks and balances” among the three federal branches? An example, as well, of the division of power between the federal government and the states (i.e., federalism)? Does the U.S. Constitution explicitly give the U.S. Supreme Court the power of judicial review? The

power to be the final interpreter of the Constitution? Do other courts have the power of judicial review of the U.S. Constitution?

***January 31. No Class (and no office hours). (Class will be made up by a two-hour, end-of-term review).**

February 5. Text 94-116. How easy is it to get the Supreme Court to hear your case?

February 7. Text 117-125. The Supreme Court and the Federal Judiciary. (Brief Review if time permits).

***February 12. Midterm exam (covering assignments January 15 through Feb. 5).**

February 14. Text 127-153. The Congress. Why are most of the powers of the Congress found in Article I? Did the framers expect that Congress would be the most important federal branch? Who is the “Gravel” in Gravel v. U.S. (149?).

February 19. Text 153-178. The Congress. McCulloch v. Maryland is another great case. (It is further discussed at 346). Why is it a great case? Where does Congress get its power to investigate? See discussion at 162.

February 21. Text 178-190. The Congress. What are “inherent powers”? (See 178). Text 192-203. The Presidency. What does the U.S. Constitution say about the powers of the Presidency? How detailed and explicit are those clauses in Article II? Where do you stand on Bush v. Gore? Justify your stand.

February 26. Text 204-228. The Presidency.

February 28. Text 228-252. The Presidency

March 4. Text 252-267. The Presidency. Text 268-278. Separation of Powers in Action

March 6. Text 278-300. Separation of Powers in Action.

March 18 Text 300-322 Separation of Powers in Action.

March 20 Text 322-329. Separation of Powers in Action. Brief Review if time permits.

***March 25 Midterm exam (covering assignments February 7 through March 18).**

March 27. Text 329-336 Separation of Powers in Action. Text 339-353. Federalism.

April 1 Text 354-379. Federalism. What is the connection between Scott v. Sandford and the Civil War?

April 3. Text 379-400. Federalism. What does NIMBY mean?

April 8. Text 407-422. Federalism. 424-431. The Commerce Power.

April 10 Text 438-442, 453-465. 465-471. The Commerce Power.

April 15. Text 476-492, The Commerce Power. Text. 510-514, 546-555. Power to Tax and Spend.

April 17 Text 565-575, 580-593. Economic Liberties and Individual Rights. The Contract Clause.

April 22.Text, 652-655. 658-670, 677-684. The Takings Clause.

(Note: The handouts, listed below, are from Epstein and Walker's Constitutional Law for a Changing America—Rights, Liberties, and Justice)
April 24. Handout, 1-25. Incorporation of the Bill of Rights. Hamdi v. Rumsfeld. (The Criminal Justice System).

April 29. Handout 26-45. The Right to Privacy.

May 1 Handout 46-66. The Right to Privacy

Two-Hour, End of Term Review. Date to be Announced.

***May 6. Cumulative Final Examination. 4 p.m.-6 p.m.**

Notes:

1. You can access cases that are not in the text by going to <http://clca.cqpress.com/>. (See Preface at xviii).

2. You can access full case opinions by going to <http://findlaw.com/cascode/supreme.html>

3. There also are blogs you may find helpful (e.g., www.scotusblog.com and balkin.blogspot.com).