

POL 311 – CONSTITUTIONAL LAW I: INSTITUTIONS AND FUNCTIONS – Fall 2009

Kutztown University of Pennsylvania

3.0 credit hours 3:00-4:20 P.M. MW – Graduate Center 101

COURSE SYLLABUS

Professor: Glenn W. Richardson Jr.
Office: 304 Old Main “A Wing”
Office Hours: MWF 11:05-11:35; MW 2:15-2:45, 4:30-5:45
Phone: 610-683-4450
E-mail: richards@kutztown.edu
Course URL: <http://faculty.kutztown.edu/richards/311/311.html>

OVERVIEW:

COURSE OBJECTIVES:

- * Students should become familiar with the evolving constitutional law pertaining to the essential institutional powers and functions of American government, demonstrated by proficiency in fixed-response and essay examinations.
- * Develop basic analytical and communications skills appropriate to the study of constitutional law and legal reasoning as demonstrated by effective participation in class discussions and various class assignments including Supreme Court simulations.
- * Encourage students to *apply* the theories and concepts of the academic study of constitutional law to the current political and legal environment as demonstrated by effective contributions to class discussions and performance on in class assignments.
- * Help students develop their ability to work productively and at a high level with others in a group environment as demonstrated by effective participation in Supreme Court simulations in class.

COURSE REQUIREMENTS:

Several in-class quizzes and group exercises.

GRADING:

Grades will be awarded in terms of the percentage of total points each student earns.

Grading Scale:

90-100 = A
80-89 = B
70-79 = C
60-69 = D
< 60 = F

ASSIGNMENTS:

NOTE: ALL ASSIGNMENTS ARE SUBJECT TO CHANGE AS ANNOUNCED IN CLASS.

***** Please be sure to back-up all of your computer files. Do not turn in your only copy of any assignments. *****

Assignment	Due Date	Points
Quiz I	Tuesday, September 16	10
Quiz II	Tuesday, September 30	10
Group Exercise I	TBA	15
Quiz III	Tuesday, October 14	10
Group Exercise II	TBA	15
Quiz IV	Tuesday, October 28	10
Quiz V	Tuesday, November 11	10
Final Exam	Tuesday, December 9	10
In-class assignments/participation	August 26-December 4	10
Optional Journal/Portfolio	Thursday, December 4	10
TOTAL	August 26-December 9	110

In-Class Quizzes (10 points each)

There are five in-class quizzes. Quizzes may consist of a combination of multiple-choice, short answer and essay questions. The material will be drawn directly from the class readings, discussions, lectures, and current events pertaining to institutional powers and functions of American government and the United States Supreme Court as reported in the *New York Times* or discussed in class. Quiz items will be designed to allow you to demonstrate your deep and detailed mastery of class materials. ***You must bring your own scantron forms to class. Failure to do so will result in a 10-point penalty and your quiz will not be returned before the end of the semester.*** The instructor reserves the right to correct any erroneously scored items or improperly recorded scores with correct values; *under no circumstances will any misscored items be counted as correct if any erasure marks appear on the item in question.*

Group Exercises (15 points each)

There are two group exercises. Each group exercise is a simulation of the decision making process of the United States Supreme Court. Students will be divided into groups of approximately four or five students each. Prior to each group meeting, each student is required to prepare a typewritten brief outlining their holding and reasoning on a selected case currently before the United States Supreme Court. Those briefs account for ten points. Each group will meet in class and reach a decision on the case. Then each group will submit its decision in writing, just as the Supreme Court would. Decisions can include majority, plurality, concurring, or dissenting opinions. Each group's decisions must in some way address the major competing claims at issue in the case (as articulated in the legal briefs of the parties to the case); dissenting opinions may facilitate (but do not guarantee) that competing claims will be addressed. Written group decisions count for five points. All members of the group shall receive the same score except in cases where the instructor (possibly in consultation with other group members) determines that different scores for different members of the group are appropriate.

In-class Assignments/Participation

Over the course of the semester, 10 points will be awarded for class participation and completion of various in-class assignments. Students who earn all 10 points will also earn a two-point bonus toward their final grade.

Optional Journal/Portfolio

Students can complete a journal/portfolio of entries pertaining to constitutional law, civil liberties and civil rights, based on events and experiences that occur during this semester. Journal/portfolios should consist of copies of articles from the *New York Times* relevant to concepts in the readings, lectures and other course activities; and typewritten responses of approximately one to two double-spaced pages to each article. Journals will be evaluated in terms of their ability to *integrate and extend class concepts in depth and detail*. As a general rule, portfolios comprised of two-page entries score higher than those comprised of one-page entries. Each portfolio must include at least seven entries. Up to two entries may relate to conversations or experiences students have had relevant to the course materials. Portfolios should be neat and well organized; unprofessional work will be marked lower. Up to 10 points toward the final grade may be earned from this assignment. Optional journal/portfolios are due in class on Wednesday, December 9.

Make-up Assignments

There will be **no** make-up assignments for unexcused absences. Acceptable excuses (medical or personal emergencies and university-related business) must be provided to the instructor **before** the assignment is due and **in writing** to be considered. Students who are unable to complete an assignment for legitimate reasons that do not qualify as excused under college guidelines, and who notify the instructor **before** the assignment is due, may, at the discretion of the instructor, turn in late assignments for partial credit.

NOTE: *Make-up tests and assignments will not be returned before the end of the semester. Make-up tests and assignments may differ from those given in class in terms of both content and form.*

Penalties for Late Assignments

Assignments turned in on the day they are due but after assignments were collected in class will face a five-percent penalty. Each additional late day will accrue an additional ten percent deduction. Electronic submission of assignments will not be accepted except at the discretion of and by the invitation of the instructor.

NOTE: *If a student misses an exam or assignment due date, late assignment penalties apply for each day the student fails to notify the instructor and discuss a make-up exam or submission of late work.*

ELECTRONIC COMMUNICATION:

This course will use Blackboard for posting course-related information. Important announcements may also be posted on the class homepage. The URL is:

<http://faculty.kutztown.edu/richards/311/311.html>

Students are responsible for monitoring and contributing to class electronic communication.

If you wish to send an e-mail message to me personally, you must address it to my e-mail address (richards@kutztown.edu). *Please include a recognizable subject line.* Doing so allows me to instantly recognize your message as important and distinguishes it from the many messages from strange e-mail addresses that arrive on a daily basis, and facilitates a prompt response from me. If you send me an e-mail message and do not receive a prompt response, please do not hesitate to send a follow-up. While I try to answer each e-mail, it can be easy to accidentally overlook any particular message, and on

occasion messages may be improperly screened by spam filters, etc. Please note that electronic submission of assignments is not acceptable except at the discretion of the instructor.

CLASSROOM ETIQUETTE

Students are expected to observe all rules of proper classroom conduct. In order to insure an appropriate environment conducive to learning there are three rules governing behavior in the classroom that you must be aware of:

- * Use of electronic devices of any kind is ***not*** permitted in class. Students with special needs should discuss accommodations with the instructor.
- * Please refrain from talking, eating, texting, leaving your cell phone ringers on, or other disruptive activity during class. Even one or two conversations quickly create distractions for other students and the instructor.
- * Please do not leave class early, or get up and leave and come back during class. If you must do so, tell the instructor before hand and arrange to sit near the door so your exit will be less noticeable.

Serious violations of these rules may result in a request that the offending individual(s) leave the classroom. Grading penalties (up to a half-letter grade for first-time offenders and a full letter-grade for recidivists) may be imposed at the discretion of the instructor.

POLICY ON ACADEMIC ETHICS AND HONESTY

If a student has plagiarized or cheated in a course, the instructor may (in consultation with the Department Chairperson and the Dean) determine that the student be dismissed from the course and given a grade of "F". The student forfeits all privileges of withdrawal from the course.

Plagiarism is stealing and passing off (the ideas, words, work, themes, reports, drawings, laboratory notes, computer programs or other products of another) as one's own. In short, it is using a created production without crediting the source. The surest way to avoid plagiarism is to provide proper citation to all works quoted directly or otherwise indirectly borrowed from. Proper citations include the title, date, and author of the work. If you are not familiar with the formatting of bibliographic citations, please consult a writer's style guide or manual. An excellent online guide to citation can be found on the internet at:

<http://www.libs.uga.edu/ref/turabian.html>

Guides for citing online materials specifically can be found on the web at:

<http://webster.commnet.edu/apa/online.htm>

or

<http://www.bedfordstmartins.com/online/cite6.html>

Cheating includes (but is not limited to) an attempt by one or more students to use unauthorized information in the taking of an exam; or knowingly to assist another student in obtaining or using unauthorized materials. Further specific delineation of academically dishonest behavior can be in [The Key: Student Handbook 2009-2010](#) (pp. 50-51). If you have any doubts as to whether particular behavior

would amount to cheating, please ask the instructor for clarification. Ignorance of the rules is not a valid defense.

CLASS MEETINGS:

Class meetings will be comprised of introductory and concluding comments from the instructor, lectures, video presentations, questions and discussions involving the whole class, and vigorous participation by students.

This format places some limits upon formal presentation by the instructor in order to maximize student engagement with the material. One requirement for this format to prove successful is that each student must come to each class prepared. That involves reading, studying, analyzing and often re-reading and re-analyzing materials before class. Inadequate preparation will virtually assure that much of what is said in the class, both by students and by the instructor, will make little sense.

You must also try to resist the temptation to discount the comments of your fellow students. The course is designed to give students the opportunity to articulate key concepts and criticisms. Many, if not most, of the important statements made in the class will be made by students. It is essential that you give the utmost respect to your classmates.

Also, keep in mind that in no case should any of the comments in the class be taken or directed personally. A college classroom is perhaps the singular place in our society where people gather for the purpose of giving deliberate and reasoned consideration to a wide range of views, including many of great controversy. Indeed, I encourage you to present views you may not necessarily agree with in order to explore and develop relevant themes or issues.

TEXTBOOKS:

There is one required textbook for this course:

Epstein, Lee, and Thomas G. Walker. *Constitutional Law for a Changing America: Institutional Powers and Constraints* (6th Edition). Washington, DC: CQ Press, 2007.

Books are available at the KU Bookstore in the Student Union Building.

NEWSPAPER:

Students are also required to read *The New York Times* for stories pertaining to the institutional powers and functions of American government and the United States Supreme Court and related issues.

READING AND ASSIGNMENT SCHEDULE

Week One: September 1-4

POL 311 Course Syllabus.

Week Two: September 7-11

**LABOR DAY: Monday, September 7
(University Closed)**

Calendar Adjustment Day: Follow Monday Schedule Tuesday, September 8.

INTRODUCTION:
THE SUPREME COURT

"The U.S. Constitution." (pp. 3-11 in Epstein and Walker)
"Understanding the U.S. Supreme Court." (Ch. 1 in Epstein and Walker)

Week Three: September 14-18

STRUCTURING THE FEDERAL SYSTEM

"Institutional Authority." (pp. 55-60 in Epstein and Walker)

Week Four: September 21-25

QUIZ I: Monday, September 21

THE JUDICIARY

"Establishment of the Federal Judiciary." (pp. 62-68 in Epstein and Walker)

Judicial Review

Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
Eakin v. Raub (1825)

Constraints on Judicial Power

Ex parte McCordle (1869)
Hamdan v. Rumsfeld (2006)
Baker v. Carr (1962)
Summers v. Earth Island Institute (2009)
Nixon v. United States (1993)
Flast v. Cohen (1968)

Week Five: September 28-October 2

THE LEGISLATURE

Congressional Authority Over Internal Affairs

Powell v. McCormack (1969)
U.S. Term Limits Inc. v. Thornton (1995)
Gravel v. United States (1972)

Sources and Scope of Legislative Powers

McCulloch v. Maryland (1819)
McGrain v. Daugherty (1927)
Watkins v. United States (1957)
Barenblatt v. United States (1959)
United States v. Curtiss-Wright Export Corp. (1936)
South Carolina v. Katzenbach (1966)

Week Six: October 5-9**QUIZ II: Monday, October 5**

THE EXECUTIVE

(Ch. 4 in Epstein and Walker)

Article II: Basic Considerations*Bush v. Gore* (2000)Execution of the Laws*In re Neagle* (1890)Domestic Powers of the President*Clinton v. City of New York* (1998)*Morrison v. Olson* (1988)*Myers v. United States* (1926)*Humphrey's Executor v. United States* (1935)*United States v. Nixon* (1974)*Mississippi v. Johnson* (1867)*Nixon v. Fitzgerald* (1982)*Clinton v. Jones* (1997)*Ex parte Grossman* (1925)*Murphy v. Ford* (1975)The President and Foreign Policy*United States v. Curtiss-Wright Export Corp.* (1936)**Week Seven: October 12-16****COLUMBUS DAY: Monday, October 12***(Classes do no meet)*

SEPARATION OF POWERS

"The Separation of Powers System in Action" (Ch. 5 in Epstein and Walker)

Domestic Powers*Mistretta v. United States* (1989)*Immigration and Naturalization Service v. Chada* (1983)*Bowsher v. Dynar* (1986)Presidential Power During War and National Emergencies*The Prize Cases* (1863)*Ex parte Milligan* (1866)

Ex parte Quirin (1942)
Korematsu v. United States (1944)
Youngstown Sheet and Tube Co. v. Sawyer (1952)
Dames & Moore v. Regan (1981)
Hamdi v. Rumsfeld (2004)
Hamdan v. Rumsfeld (2006)
Boumediene v. Bush (2008)

Week Eight: October 19-23

QUIZ III: Monday, October 19

NATION-STATE RELATIONS

“Federalism.” (Ch. 6 in Epstein and Walker)

Nation-State Relations: The Doctrinal Cycle

McCulloch v. Maryland (1819)
Dred Scott v. Sandford (1857)
Hammer v. Dagenhart (1918)
United States v. Darby Lumber (1983)
Webster v. Reproductive Health Services (1991)
National League of Cities v. Usery (1976)
Garcia v. San Antonio Metropolitan Transit Authority (1985)
New York v. United States (1992)
Printz v. United States (1997)

The Eleventh Amendment

Alden v. Maine (1999)

New Judicial Federalism

Michigan v. Long (1983)

National Preemption of State Laws

State of Missouri v. Holland (1920)
Crosby v. National Foreign Trade Council (2000)
Pennsylvania v. Nelson (1956)
Pacific Gas and Elec. V. State Energy Resources Conservation and Development Comm’n (1983)
Wyeth v. Levine (2009)

Week Nine: October 26-30

THE COMMERCE POWER

Constitutional Foundations of the Commerce Power

Gibbons v. Ogden (1824)

Defining Interstate Commerce

United States v. E.C. Knight Co. (1895)
Stafford v. Wallace (1922)

The Supreme Court and the New Deal

A.L.A. Schechter Poultry Corp. v. United States (1935)
Carter v. Carter Coal Co. (1936)
National Labor Relations Board v. Jones & Laughlin Steel Corporation (1937)
Wickard v. Filburn (1942)
United States v. Lopez (1995)
United States v. Morrison (2001)
Gonzales v. Raich (2005)

Regulating Commerce as a Federal Police Power

Champion v. Ames (1903)
Heart of Atlanta Motel v. United States (1964)

Commerce Power of the States

Cooley v. Board of Wardens (1852)
Southern Pacific Company v. Arizona (1945)
Hunt v. Washington State Apple Advertising Commission (1977)
Maine v. Taylor (1986)
Granholm v. Heald (2005)

Week Ten: November 2-6**QUIZ IV: Monday, November 2**

THE POWER TO TAX AND SPEND

Direct Taxes and the Power to Tax Income

Pollock v. Farmers' Loan and Trust Co. (1895)

Taxation of Exports

United States v. United States Shoe Co. (1998)

Intergovernmental Tax Immunity

South Carolina v. Baker (1988)
Davis v. Michigan Dept. of Treasury (1989)

Taxation as Regulatory Power

McCray v. United States (1904)
Bailey v. Drexel (1922)

Taxing and Spending for the General Welfare

United States v. Butler (1936)
Steward Machine Co. v. Davis (1937)
South Dakota v. Dole (1987)

Restrictions on the Revenue Powers of the States

Michelin Tire Co. v. Wages (1976)
Complete Auto Transit v. Brady (1977)
Quill Corp. v. North Dakota (1992)
Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore. (1994)\

Week Eleven: November 9-13

ECONOMIC LIBERTIES

The Contract Clause

Fletcher v. Peck (1820)
Trustees of Dartmouth College v. Woodward (1819)

Decline of the Contract Clause

Proprietors of Charles River Bridge v. Proprietors of Warren Bridge (1837)
Stone v. Mississippi (1880)
Home Building and Loan Assn. v. Blaisdell (1934)

Modern Applications of the Commerce Clause

United States Trust Co. v. New Jersey (1977)
Allied Structural Steel Co. v. Spannaus (1978)

Week Twelve: November 16-20

QUIZ V: Monday, November 16

ECONOMIC SUBSTANTIVE DUE PROCESS

Development of Substantive Due Process

The Slaughterhouse Cases (1873)
Munn v. Illinois (1877)
Allgeyer v. Louisiana (1897)

The Roller Coaster Rise of Substantive Due Process: 1898-1923

Lochner v. New York (1905)
Muller v. Oregon (1908)

The Heyday of Substantive Due Process: 1923-1936

Nebbia v. New York (1934)
West Coast Hotel v. Parrish (1937)

Williamson v. Lee Optical Co. (1955)

Substantive Due Process: Contemporary Relevance

BMW of America v. Gore (1996)

Week Thirteen: November 23-27

THE TAKINGS CLAUSE

What is a Taking?

United States v. Causby (1946)

Penn Central Transportation Company v. City of New York (1978)

Nollan v. California Coastal Commission (1987)

Lucas v. South Carolina Coastal Council (1992)

Public Use Requirement

Berman v. Parker (1954)

Hawaii Housing Authority v. Midkiff (1984)

Kelo v. City of New London (2005)

THANKSGIVING RECESS

Begins: Tuesday, November 24 at close of classes

Ends: Monday, November 30 at 8:00 AM

Week Fourteen: November 30-December 4

Week Fifteen: December 7-11

CONCLUSION AND REVIEW

Week Sixteen: December 14-18

FINALS WEEK

Final Exam: Friday, December 18, 11:00 A.M.

PLEASE NOTE: *If a class examination is scheduled or a class assignment due on a day when classes are cancelled, the exam will be given or the assignment will be due on the next day classes do meet.*

NOTE: ALL ASSIGNMENTS ARE SUBJECT TO CHANGE AS ANNOUNCED IN CLASS.