

POSC 311 (CONSTITUTIONAL LAW -- POWERS)

**Spring 2015
TTh, 11-12:15
SSPA 209**

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Regular Office Hours (SSPA 251): W, 11:00-12:30; 2:15-3:45
(book appointments here: www.CSULBPOSCWHITEHEAD.clickbook.net)

Course Description & Goals. This course deals with the structure of American government as laid out in our most important founding document – the Constitution – and in Supreme Court decisions interpreting that document. As you will see, some of our most cherished values, as well as our most divisive controversies, play themselves out in the forum of constitutional law. The focus of this course will be on the original articles of the Constitution, rather than the Bill of Rights or the 14th Amendment (which are the subject of another course, POSC 312). This means that, instead of focusing on individual rights, we will be discussing the nature and scope of the powers exercised by Congress, the President, and the Courts, and the relationship between national and state power.

The primary themes of the course will be the basic principles of constitutionalism, including separation of powers, checks and balances, federalism, representative democracy, and the rule of law. Focusing on these themes will lead us to examine some perennially important issues in American politics, including the proper role of courts in our political system, the powers of the legislature and the presidency, and the proper balance of power between local, state, and national government.

Along the way, I hope that you will develop a richer understanding of the principles behind our constitution, and a stronger ability to decide for yourself whether or not our government lives up to these principles. In order to help you reach these general goals, I will do my best to teach you how to understand, describe, and critically analyze: (1) the language, logic, and structure of the Constitution related to governmental powers; (2) Supreme Court decisions interpreting those powers; (3) the standards and tests used by the Court in these cases; and (4) historical and contemporary trends in constitutional decision making. Finally, I will help you develop and articulate your own arguments about the meaning and application of constitutional principles.

Course Texts:

- Craig R. Ducat, *Constitutional Interpretation, Powers of the Government, Volume I (10th Edition)* – NOTE: I am not assigning the digital version; the exams are open-book and you will not be able to use electronic devices during the exams; if you do not buy a hard copy, you will be at a strong disadvantage for these exams!

- Other Readings Posted on BeachBoard

Course Assignments:

- **Judicial Review Foundations Paper (15%) – Due Online Mar. 8, 11:59 PM:** This is a 5-7 page (double-spaced) paper focusing on the constitutional debate surrounding the Supreme Court’s power of judicial review. See separate instructions posted on BeachBoard.
- **Mid-Term Exam (25%) – Mar. 12:** This is an in-class, open-book and partial open-note, essay exam. I will post a study guide on BeachBoard before the exam, and we will spend the entire class period before the exam discussing it.
- **Judicial Review Assessment Paper (25%) – Due Online May 3, 11:59 PM:** This is an 8-page (minimum) paper discussing one particular area of constitutional doctrine (e.g., federalism, presidential power, etc.) and assessing whether or not the Supreme Court has properly exercised judicial review in that area. See separate instructions posted on BeachBoard.
- **Final Exam (25%) – Thursday, May 14, 10:15 AM -12:15 PM.** This is an in-class, open-book and partial open-note, essay exam. I will post a study guide on BeachBoard before the exam, and we will spend the entire class period before the exam discussing it.
- **Class Participation and Overall Improvement (10%):** I will grade you on your general engagement in the course, including your willingness to participate in class discussions and your willingness to ask and answer questions related to class material. I will also grade you on your overall effort in the course. Students who are on the borderline between one final grade and another will receive a “bump” to the higher grade if they are making every effort to succeed.

General Course Expectations:

Class Structure. This is both a lecture and a discussion course. I will do my best to provide you with the proper context for understanding the cases and other readings. However, the only way to really understand court decisions is to talk about them together. Thus, much of our class time will be devoted to a discussion of the assigned cases. You should take notes on what I say about the cases, and you should also be ready to discuss those cases yourself. I will not take attendance. However, your attention to both the lecture and the class discussions will naturally be reflected in your grades.

Readings. This is a reading-intensive course. You need to keep up with the assigned cases in order to do well. Even if you do not understand them at first glance, at least make an attempt to do so *before* coming to class. Often, it will be helpful to read the cases again *after* we discuss them in class. There is too much reading to wait until the last minute, so make sure to discipline yourself and keep up.

Papers. You must spend a significant amount of time outside class working on the written assignments. I will give you as much feedback as I can, if you e-mail or come to see me during office hours. I will also give you detailed written instructions. However, it is *your responsibility* to gather, read, and understand the appropriate information, and to put that information together in an accurate and persuasive way.

Classroom Behavior. You must be prompt, prepared, and respectful of your fellow students. Among other things, this means: being in your seat promptly when class starts and making the least amount of disruption if you happen to be late; putting electronic devices on silent; and being attentive during class -- either taking notes, listening, or engaging in class discussion, and *not* browsing the internet, messaging, texting, listening to music, or talking to other students. I reserve the right to remove inattentive or disruptive students from class for that particular class session.

E-mail and Office Hours. I will make every reasonable effort to help you understand the material better outside of class. The best way to reach me is almost always through e-mail (address noted at beginning of syllabus). I enjoy discussing these issues with you via e-mail, and I encourage you to take advantage of that opportunity. I will make every effort to reply to class-related e-mails within 24 hours, EXCEPT on weekends and holidays. I generally have a huge number of e-mails to answer immediately before exam dates or paper deadlines. Thus, I cannot guarantee a timely reply within 48 hours of these events. So, it is in your interest to start studying and working on your papers early so that you can take maximum advantage of my advice and help. I am also available during scheduled office hours, or by appointment when necessary. I love when students come by and chat about course-related issues – it's one of the most significant things you can do to improve your college experience!

Grade-Related Communication –24-hour Cooling-off Period. I am always happy to review your exams and papers with you in order to help you improve for the future. However, if you are unhappy or dissatisfied with your grade, I require you to wait for at least 24 hours before e-mailing or talking to me in person. The reason for this delay is to allow you time to re-read the exam or paper, read and understand my comments, and otherwise consider your performance in a deliberate, thoughtful way. After 24 hours have gone by, if you have questions or concerns, please don't hesitate to contact me. Always remember, this is not a game or a competition – it is a learning process. Grades are designed to help you learn the material. If your focus is only on getting a better grade, you are missing the point. I am committed to helping you grow and develop as thinkers and writers, but that will only happen if you approach class the same way.

Problems. Come and see me as soon as possible if you are having problems understanding, keeping up, or if there is any reason you cannot be effectively engaged in the course. I will not provide any accommodations for these issues at the last minute, but if you talk to me in advance, we can almost always work something out.

Specific course policies regarding paper submission, exceptions, makeups, late assignments, cheating and plagiarism, students with disabilities and course withdrawal can be seen in the appendix at the end of this syllabus.

Course Outline and Reading Schedule

I. Constitutional History, Principles, and Structure

Jan. 20: Julie Novkov, “How to Read a Case” (BeachBoard)

Jan. 22: Ducat, pp. D1-D8 (The United States Constitution)
Calder v. Bull (BeachBoard)

II. Judicial Power

A. The Power of Judicial Review

Week of Jan. 27

& Day of Feb. 3: Re-read pp. D 6-7 (Text of Article III)

Pp. 1-23:

Primary Cases:

Marbury v. Madison¹

Martin v. Hunter’s Lessee

Secondary Cases:

*Eakin v. Raub*²

Cohens v. Virginia

B. Limits on Judicial Review

Day of Feb. 5,

Week of Feb. 10 &

Day of Feb. 17:

Pp. 23-26; 40-73:

Primary Cases:

Ex Parte McCordle

Muskrat v. U.S.

Doe v. Bush

Baker v. Carr

Secondary Cases:

Allen v. Wright

DaimlerChrysler Corp. v. Cuno

Padilla v. Hanft/Rumsfeld

Sosna v. Iowa

Hollingsworth v. Perry (BeachBoard – Read pp. 1-17)

(NOTE: use the page numbers within the actual

¹ “Primary Cases,” listed in **bold** font, are the ones you will be required to discuss in class. Pay especially careful attention to the facts, issues, holdings, and reasoning of these cases.

² “Secondary Cases,” listed only in *italic* font, provide important context and history. You are still responsible for knowing their basic details, but you will not be required to discuss them in much depth.

document, not the page numbers in the Adobe Reader)
Arizonans for Official English v. Arizona
Colgrove v. Green
Luther v. Borden
Bush v. Gore

III. Legislative Power

A. Legislative Self-Regulation

Feb. 19: Re-read pp. D 1-4 (text of Article I)
Pp. 57-58, 107-8 and 171-75:
Secondary Cases:
Powell v. McCormick
U.S. Term Limits v. Thornton
Hutchinson v. Proxmyre
U.S. v. Johnson

B. Core Legislative Power

Feb. 24: Pp. 108-115:
Primary Case:
McCulloch v. Maryland

C. Amendment-Enforcing Power

Feb. 26: Pp. 116-24:
Primary Case:
City of Boerne v. Flores
Secondary Case:
South Carolina v. Katzenbach
Employment Division, Department of Human Resources of Oregon v. Smith
Shelby County v. Holder (BeachBoard)

D. Delegation of Power

Mar. 3: Pp. 132-54:
Primary Cases:
INS v. Chadha
Secondary Cases:
Hampton v. United States
Panama Refining Co. v. Ryan
Schechter Poultry Co. v. U.S.
Clinton v. City of New York

E. Investigative Powers

Mar. 5: Pp. 154-57; 164-67:
Secondary Cases:
McGrain v. Daugherty
Watkins v. U.S.
Barenblatt v. U.S.

Mar. 8, 11:59 PM: **Judicial Review Foundations Paper Due Online**

Mar. 10: **Mid-Term Review Session**

Mar. 12: **Mid-Term Exam**

IV. Executive Power

A. Executive Self-Regulation

Week of Mar. 17: Re-read pp. D 5-6 (Text of Article II)
Pp. 176-90; 216-36:
Primary Cases:
Myers v. U.S.
U.S. v. Nixon
Secondary Cases:
Humphrey's Executor v. U.S.
Morrison v. Olson
Canning v. NLRB (BeachBoard – read pp. 1-4, 13-44)
Nixon v. Fitzgerald
Senate Select Committee on Presidential Campaign Activities v. Nixon
Clinton v. Jones

B. Foreign Affairs Power

1. Use of Military Force

Mar. 24: Pp. 190-93; 248-59:
The War Powers Resolution
Primary Case:
Dellums v. Bush
Secondary Case:
The Prize Cases
Authorization for the Use of Military Force (BeachBoard)

2. “Emergency” Powers

Mar. 26: Pp. 206-15; 242-47; 275-76:

Primary Case:

Youngstown Sheet & Tube Co. v. Sawyer

Secondary Cases:

U.S. v. Curtiss-Wright Export Corp.

ACLU v. Clapper (BeachBoard – Read pp. 1-13, 25-37, 47-53)

Klayman v. Obama (BeachBoard – Read pp. 1-23, 58-68)

Week of Mar. 31: No Class – Spring Break

3. Detention and Trial of Combatants

Week of Apr. 7: Pp. 193-206; 259-76:

Primary Cases:

Ex Parte Milligan

Korematsu v. U.S.

Boumediene v. Bush

Secondary Cases:

Ex Parte Quirin

Hamdi v. Rumsfeld

Hamdan v. Rumsfeld

Al Bihani v. Obama (BeachBoard)

V. Federalism

A. Pre-New-Deal Cases

Week of Apr. 14: Re-read p. D 3 (Text of Interstate Commerce Clause – Art. I, sec. 8, Cl. 3)

p. D9 (Text of 10th Amendment)

Pp. 289-95; 298-302; 312-15; 405; 409-11

Primary Cases:

Gibbons v. Ogden

U.S. v. E.C. Knight

Secondary Cases:

Willson v. Black-Bird Creek Marsh Co.

Mayor of City of New York v. Miln

Cooley v. Board of Wardens

Champion v. Ames

Swift v. U.S.

B. New Deal and Civil Rights Cases

Week of Apr. 21: Pp. 304-11; 315-18; 326-37:

Primary Cases:

Wickard v. Filburn

Heart of Atlanta Motel v. U.S.

Katzenbach v. McClung

Secondary Cases:

Hammer v. Dagenhart

NLRB v. Jones & Laughlin Steel Corp.

U.S. v. Darby

Schechter Poultry Corp. v. U.S.

C. Contemporary Cases

Week of Apr. 28: Pp. 337-51:

Primary Cases:

U.S. v. Lopez

U.S. v. Morrison

Secondary Case:

Gonzales v. Raich

May 3, 11:59 PM: Judicial Review Assessment Paper Due Online

May 5: Pp. 351-54; 390-91:

Primary Case:

National Federation of Independent Business v. Sebelius
(BeachBoard – Read pp. 1-9; 15-27; 31-38; 42-44; 58-59) (NOTE: use the page numbers within the actual document, not the page numbers in the Adobe Reader)

Secondary Case:

Arizona v. U.S.

May 7: Final Review Session

Thursday, May 14, 10:15 AM -12:15 PM: Final Exam

Appendix: Miscellaneous Course Policies

Paper Submissions. You must upload your paper to the appropriate electronic “dropbox” on BeachBoard in one of the following formats: .doc, .docx, .txt, or .pdf. . *I will not accept papers submitted in any other way.* You must save a copy of the electronic notification you receive when you successfully upload your paper to BeachBoard. In the event of a discrepancy as to whether or when you submitted your paper, this electronic notification is the only proof I will accept. You must also keep an electronic or paper copy of your paper.

Exceptions, Make-ups, and Late Assignments. Exam Dates and Paper Deadlines are firm! It is your responsibility to arrange your schedule around your academic responsibilities. In general, **exceptions will only be made for the following reasons, for which satisfactory documentation must be provided:** (1) Illness or injury to the student; (2) Death, injury, or serious illness of an immediate family member or the like; (3) Religious reasons (listed in California Education Code section 89320); (4) Jury duty or government obligation; or (5) University sanctioned or approved activities, such as artistic performances, forensics competitions, participation in research conferences, intercollegiate athletic activities, student government, required class field trips, etc.. **To be excused under #1 or 2, you must provide BOTH satisfactory documentation as soon as possible AND evidence of work completed on the assignment at the time of sickness or illness. To be excused under #s 3-5, however, you must provide me with satisfactory documentation at least 1 week prior to the exam or deadline.** If you have a legitimate excuse for missing an exam, I will arrange for an appropriate make-up exam. If you have a legitimate excuse for missing a paper deadline, we will work out an appropriate alternative deadline AS LONG AS you can demonstrate that you have already completed an appropriate amount of work on the assignment.

Grade Reduction for Late Papers. Written assignments are due at the *beginning* of the class period on which the deadline falls. **In the event of an unexcused late paper, I will immediately mark it down by a third of a grade for being late on the day it is due. I will then mark it down another third of a grade for every 24-hour period in which it is late.** For example, a paper due on Tuesday but not turned in until Thursday will be reduced by two-thirds of a grade -- a “B” paper would receive a “C+.” Note, however, that this does not apply to the required case briefs, which will only receive credit if they are turned in by the deadline. *You will not receive any credit for late briefs.* Make the most of the time you have to complete written assignments; no allowances will be made for last-minute problems with computers, networks, etc..

Cheating and Plagiarism. It is my policy to deal with any form of cheating and/or plagiarism by immediately giving a failing grade on the assignment and reporting you to the department and other administrative authorities for other possible sanctions. If you are having problems with the course material, please come and see me before doing something that could put your academic career in jeopardy.

Please note that “plagiarism” includes *any use* of the ideas or work of others as if they were one’s own, without giving appropriate credit. That means that *failing to cite your sources* is more than just a technical glitch -- it is plagiarism and will be handled as such. See separate

paper instructions for citation guidelines and please see me if you are having difficulty understanding what is required in this area.

Students with Disabilities. I am completely committed to providing reasonable accommodations for any student with a verifiable physical or other disability. This may include alternative testing or note-taking arranged through Disabled Student Services. However, it is your responsibility to notify me in advance of the need for such an accommodation.

University Withdrawal Policy. It is your responsibility to withdraw from class if you wish to do so. I have no obligation to withdraw registered students who stop attending or completing assignments. **The deadline to withdraw from a class without a “W” for this semester is February 2, 2015.**

Withdrawal from a course after that date requires the signature of the instructor and the department chair, and is permissible only for serious and compelling reasons. For example, severe or extensive medical problems would be serious and compelling, but fear of receiving a final grade lower than desired, or a change in one’s work schedule would not be considered serious and compelling. If withdrawal is allowed, a “W” will appear on your transcript.

DURING THE FINAL THREE WEEKS OF INSTRUCTION (AFTER April 17, 2015) WITHDRAWALS ARE NOT PERMITTED EXCEPT IN CASES SUCH AS ACCIDENT OR SERIOUS ILLNESS WHERE THE CIRCUMSTANCES CAUSING THE WITHDRAWAL ARE CLEARLY BEYOND THE STUDENT’S CONTROL. THE CAUSE MUST BE DOCUMENTED. ORDINARILY, WITHDRAWALS IN THIS CATEGORY INVOLVE TOTAL WITHDRAWAL FROM THE UNIVERSITY. YOU WILL NEED THE APPROVAL OF THE COLLEGE DEAN AS WELL AS THAT OF THE CLASS INSTRUCTOR AND THE DEPARTMENT CHAIRPERSON FOR EACH CLASS YOU DROP.