

Constitutional Law I
Fall 2008
Professor Bryant

Course Introduction
& Syllabus

Course Description, Goals, and Objectives: Welcome to law school! This first of two semesters of constitutional law during your first year is devoted to the study of judicial review, the Constitution's enumeration and limitation of the powers of Congress, the Constitution's separation of powers among the three branches of the federal government, and the Fourteenth Amendment's guarantee of "the equal protection of the laws." With the possible exception of the last-mentioned subject, these topics concern the distribution of governmental authority among the branches and levels of American government, rather than direct constitutional protection of individual rights from governmental infringement. (The second semester of the year-long sequence focuses on individual rights.)

Yet it would be a serious mistake to conclude, therefore, that constitutional law I is largely irrelevant to human freedom. The framers of the U.S. Constitution – the oldest written constitution of any government in the world – almost uniformly distrusted "parchment" protections of individual liberties, instead placing their hopes in governmental structure as the primary means to preserve their "new order for the ages" from the all too clear tendency of popular governments to decay into one or another form of tyranny. So it is altogether appropriate that, as you begin your life as a law student and lawyer, you dedicate a portion of your time and energies to examining the governmental structure constituted by U.S. fundamental law. Nor should you dismiss these matters as of merely theoretical or historical interest, unrelated to the present-day practice of law. The last twenty-five, and especially the last ten, years have witnessed a resurgence of interest on the Supreme Court in questions concerning federalism and the separation of powers. So too, then, has the legal profession been forced to confront these same questions as present issues raised by a wide variety of clients seeking counsel and/or representation. We will also study the Constitution's promise that no person be denied the equal protection of the laws – a promise of pervasive, present-day, and hotly contested significance. So far this paragraph has aimed at convincing you that the subjects treated in this course are worthy of your careful study. In any event, I think you will find these subjects deeply interesting, challenging, rewarding, and fun – in short worth learning for learning's sake.

As for goals and objectives, I hope that over the course of the next four months all of us, in addition to increasing our knowledge of these subjects, will also develop a greater facility with the materials and methods of analysis and argument prevailing in the administration of the law generally and of constitutional law in particular. For example, this course should enhance one's understanding of the various methods of interpreting the Constitution, the role of the judiciary in doing the same, and the contending claims of pragmatic and formalistic approaches to issues arising in modern constitutional law.

Finally, I believe that studying the law brings with it special responsibilities, analogous to those memorialized by the medical profession's Hippocratic oath. In the United States, lawyers necessarily shoulder a special duty to lead public efforts to understand, preserve, and improve our constitutional order so that both present and future generations may enjoy the inestimable benefits of limited, constitutional government. I hope that this course may play some small part in better preparing all of us to meet that duty.

The "Nuts & Bolts"

Required Texts: GEOFFREY R. STONE, ET AL., CONSTITUTIONAL LAW (5th ed. 2005) (hereinafter "STONE"). Note: The case supplement is NOT required.

CONSTITUTIONAL LAW STORIES (Michael Dorf ed., 2004) (Hereinafter "Dorf").

Class Attendance, Preparation for Class, and Grading: At the beginning of each class session (not including our first session), I will hand out an attendance sheet for you to sign or initial if present. Of course, you may NOT sign the sheet on behalf of someone else. More than four **unexcused** absences during the semester will lower your final grade (see discussion of grading, below). More than eight **unexcused** absences may result in your withdrawal from the course. Whether such a withdrawal would be deemed "authorized" or "unauthorized, failing" would ultimately be the decision of Associate Dean Oliver. (I would, of course, contact you and offer you an opportunity to explain your absences before asking that you be removed from the course.) An *excused* absence does NOT count against either of these tallies. If you are seeking an excused absence, please give me a brief explanation in writing (or by email). Illness or personal or family emergencies always constitute valid excuses for missing class, and I will entertain other grounds for excuse on a case by case basis. Of course, I will also honor the College's policy of respecting observance of any religious holidays.

As a general matter, I will call on students at random, inviting comments by volunteers from time to time. If you are not fully prepared for a particular class session, please let me know before class so that I will know not to call on you that day. (You may avail yourself of this privilege no more than twice a semester.) Although your grade will be based primarily on your performance on the final examination at the end of the semester, excellent attendance, preparation, and class participation may raise final grades as much as ½ a letter grade (*i.e.* from a B to a B+). Poor attendance (more than four *unexcused* absences during the semester), preparation, or class participation will lower final grades ½ a letter grade.

The final examination for this course will be a three-hour, closed-book, closed-note examination, consisting of two sections. The first section, worth 1/3 of your exam grade, will ask you to choose one from a list of three short essay questions. To properly answer your question, you will need to write an essay articulating and defending a normative critique of the current state of the law governing one of the more controversial topics studied during the semester. At the end of the semester I will hand out a list of five essay questions, three of which will appear on the final in section I. The other section of the exam, worth 2/3s of your exam grade, will consist of a traditional law-school, hypothetical fact pattern. You will be asked to

identify and analyze the constitutional law I legal issues raised on the hypothetical facts. The last two exams I gave for this course will be posted on the course TWEN page.

Office Hours and Contact Information: Please feel free to contact me as often as you wish to ask me questions or communicate any suggestions or concerns about the course or law school more generally. My office is in room 426 (phone: 556-0099), and I will make every effort to be there, available to meet with you (and take your phone calls) at the following times (at a minimum):

Mondays 2:00-4:00

Thursdays 2:30-3:30

I realize these office hours are rather lean; they are a floor, not a ceiling. I will also frequently be available at my office at other times and *at any mutually convenient time by appointment*. My email address is chris.bryant@UC.Edu, and I will try to check my voicemail and email messages at least once each business day. (I may, though, take more than a day to get back to you.) I encourage you to write me comments or questions about the subjects we will be covering in class. As often these questions will be of interest to your fellow students, *I reserve the right to forward your questions and my answers to your classmates, unless your email asks that your communication remain confidential, in which case I will always honor the request for confidentiality.*

Course web page: I have set up a TWEN (The West Education Network) web page for this course. Please register on that web page as soon as possible by going to www.westlaw.com, signing on with your student password, selecting first TWEN from the menu at the lower left-hand side of the screen, and when on the TWEN page selecting the web page for this course. TWEN will then walk you through registration. You will also need to supply an email address that you check on a routine basis. When one of us adds anything to the course web page, you will receive an email message notifying you of this addition. *It is your responsibility to keep your TWEN email address current and to check your email frequently. Throughout the semester I will use the TWEN page to distribute course-related materials, to address administrative issues (including revisions to assignments or, if need be, cancellation and rescheduling of class sessions), and to answer student questions about the course. You are responsible for all material and information distributed via the TWEN page, without regard to whether I also mention the same in class.* Should you have any difficulty using TWEN, please contact your student westlaw representative. Please let me know should he or she prove unable to remedy any problems you may have.

Students with Disabilities: If you have a disability that requires assistance, you will need to contact Associate Dean Oliver for coordination in your academic accommodations.

Reading Assignments: The lesson plan for the course is set forth below. I will, I am sure, make changes as we progress through the semester.

READING ASSIGNMENTS

<u>Session#/Date</u>	<u>Subject</u>	<u>Reading Assignment</u>
Introduction/Interpreting the Constitution		
1. 8/28/08	Methods of Interpretation	Handout #1
2. 8/29	Same as above	Same + Handout #2
LABOR DAY HOLIDAY		
Framing & Ratification		
3. 9/4	Inadequacy (?) of Arts. of Confed.	STONE at 8-14 & Handout #3
4. 9/5	U.S. Const. & Bill of Rights	STONE at 14-26 & Handout #4
Judicial Review: Legitimacy & Limitations		
5. 9/8	S. Ct. review of fed. statutes	STONE at 29-50 & Dorf at 13-31
6. 9/11	Same as above	Same as above, plus STONE at 57-60 & Handout #5
The Powers of Congress		
7. 9/12	Methodology & Interpretation	STONE at 61-77, plus Dorf at 33-67
8. 9/15	Same as above	Same as above
9. 9/18	Interstate Commerce	STONE at 163-73
10. 9/19	Same as above	STONE at 185-92 & 173-75

11. 9/22	I.C. during the New Deal	STONE at 192-206
12. 9/25	Same as above	STONE at 175-85 & 206-11, plus Dorf at 69-118
13. 9/26	I.C.: recent developments	STONE at 211-29
14. 9/29	Same as above	Handout #6
15. 10/2	Taxing & Spending	STONE at 279-96
16. 10/3	Reconstruction Amendments	STONE at 299-312 & 327-30, plus Dorf at 505-31
17. 10/6	Treaties (& the Tenth Amend.)	STONE at 330-37
18. 10/9	Tenth Amend. & Implied Limits	STONE at 337-56
Separation of Powers		
19. 10/10	<i>Youngstown</i>	STONE at 357-72
FALL BREAK		
20. 10/20	<i>Dames & Moore, Curtiss-Wright</i>	STONE at 372-83
21. 10/23	<i>Hamdi & Hamdan</i>	STONE at 383-98 & Handout #7
22. 10/24	Division of War Powers	STONE at 296-99 & 399-405
23. 10/27	Exec. priv. & impeachment	STONE at 405-17
24. 10/30	Non-delegation & leg. veto	STONE at 417- 29
25. 10/31	“Unitary” (?) executive	STONE at 429-45

Equal Protection of the Laws

26. 11/3	Early Judicial Treatment	STONE at 457-69 & Dorf at 181-222
27. 11/6	<i>Brown v. Board of Ed.</i>	STONE at 469-83
28. 11/7	Judicially ordered desegregation	STONE at 483-97
29. 11/10	Rational basis review	STONE at 501-04, 507-16 & 519-23
30. 11/13	Race-specific classifications	STONE at 523-42 & Dorf at 249-95
31. 11/14	And the problem of “effects”	STONE at 542-44 & 546-50
32. 11/17	“Benign” racial classifications	STONE at 576-94
33. 11/20	More on the same subject	STONE at 594-611
34. 11/21	More on the same subject	Handout #8
35. 11/24	Gender discrimination	STONE at 622-39

THANKSGIVING HOLIDAY

36. 12/1	More on the same subject	STONE at 639-58
37. 12/4	Same + Sexual orientation	STONE at 658-80
38. 12/5	Sexual orientation, continued	STONE at 681-89

CLASSES END

12/18	Final examination	
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