

**Political Science 4241 - 001  
CONSTITUTIONAL LAW I**

**FALL 2010**

M, W, F 12:00 - 12:50 pm  
CLRE 207

Prof. Douglas Costain  
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Office Phone 492.6806  
Hours: T, Th 10-11:30am  
and by appointment  
email: [costaind@colorado.edu](mailto:costaind@colorado.edu)

Pre-law advising office: 2-5 pm M-F (by appt. only)  
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*Graduate Assistant*: Mark Denniston, J.D.; Office- Ketchum 131A; hours- M 1:00-2:00pm; W 10:30-11:30am  
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This course examines selected aspects of the evolution of the US Constitution through interpretation by the Supreme Court. The first part of the course will focus on the Court as a social and political institution. Then we look at the major cases decided by the Supreme Court in several key areas of governmental powers. Through analysis of these cases we will discuss the changing doctrines used by the Justices to allocate and limit government power.

NOTE: There will be several supplements to this syllabus. One will provide guidelines on how to brief cases. C-SPAN and other electronic media will be used to supplement written and lecture material. Students are responsible for arranging to access any and all material resulting from absence from class.

**COURSE REQUIREMENTS**

**Required Books:** (all are paperback)

Epstein, L. & T.G. Walker, **Constitutional Law for a Changing America: Institutional Powers and Constraints**. 7<sup>th</sup> Ed. (2011).

Jeffrey Toobin, **The Nine: Inside the Secret World of the Supreme Court** (2007)

Lawrence Baum, **The Supreme Court**, 10<sup>th</sup> edition, (2010). (essential for non-psci majors)

**Examinations:**

**First Examination, Wednesday, Oct 6 (25%)**

**Second Examination, Friday, Nov 5 (25%)**

**FINAL Examination, Wednesday, Dec 15 (35%) 1:30 PM - 4:00 PM**

If you require any special accommodations, please notify me before September 15<sup>th</sup>. The Office of Disability Services is located in Willard 322; (303.492.8571.)

If the class schedule conflicts with your religious observances please notify me before Sept. 5<sup>th</sup>.

The CU Honor Code description of unethical behavior, such as plagiarism, and the sanctions that may result, are available at: [colorado.edu/academics/honorcode/](http://colorado.edu/academics/honorcode/)

Discrimination or Harassment for any reason is an offense against the university community and is subject to sanctions. To file a complaint, call 303.492.2127, to review policies, go to [colorado.edu/odh](http://colorado.edu/odh)

**Case Briefings: (15%)**

Each student will prepare and submit **written briefs** in her own words on cases from the syllabus which will be unique to each briefing group. Each person will also give **oral briefs** to the class on these cases with their briefing group. "Briefing groups" of two to four students will be formed to provide in-class overviews, oral and written case briefs of the cases from the syllabus -including updates on recent appellate and Supreme Court decisions. Details will be given later in class.

**EXPANDED BRIEFINGS:** < > marks several important cases that will be the subjects of "debate" that is, expanded interactive discussion using both the majority and the dissenting perspectives. Participants will be eligible for up to 10 extra credit points as well as the standard case briefing grade

**Extra-Credit: Optional Oral Reports.**

Case briefings/presentations by individuals or coops on current constitutional cases NOT analyzed in the course will be arranged. Bonus points worth **up to 10 points (added to the in-class exams score)** will be earned by participants.

Constitutional News: Students can earn bonus points by reporting to the class on a Constitutional case before the federal courts or a court's opinion on a current Constitutional case. ([www.uscourts.gov/links.html](http://www.uscourts.gov/links.html)) ([www.scotus.gov](http://www.scotus.gov)) ([oyez.org](http://oyez.org)). For great on-line discussion of current Supreme Court cases and issues: [scotusblog.com](http://scotusblog.com)

**TOPICS AND ASSIGNMENTS ((#) = briefing group )**

Aug 23	Introduction
Aug 25-30	Toobin, <b>The Nine</b> , Prologue and chapters 1-8. Baum, <b>The Supreme Court</b> , chapter 1, 2.
Sept 1-3	The Justices; Baum, <b>The Supreme Court</b> ch.2. Toobin, <b>The Nine</b> , ch. 19-24
SEPT 6	LABOR DAY HOLIDAY
Sept 8-10	The Cases; Baum, ch. 3. Epstein/Walker, <b>C.L.F.C.A.</b> , I-Intro. and <i>Federalist</i> #78.(687-690)
Sept 13-15	Decision-Making; Baum, ch. 4. Epstein, & Walker, <b>C.L.C.A.</b> I-#1.
Sept 17	The Court and Policy; Baum, ch. 5. Toobin, ch. 25-26.
Sept 20	The Court's Impact. Baum, ch. 6.
Sept 22-29	(Briefing Court Cases ) Judicial Review: Justiciability and Standing; Epstein, & Walker, <b>Constitutional Law for a Changing America (C.L.C.A.)</b> , II-Intro. <i>Marbury v. Madison</i> & video; <i>Martin v. Hunter's Lessee</i> ; <i>Eakin v. Robb</i> ; Epstein/Walker, <b>C.L.F.C.A.</b> , 2. and <i>Federalist</i> #78. (Begin student case briefing group presentations)
Oct 1-4	Constraints on Judicial Power; Epstein/Walker, <b>C.L.F.C.A.</b> , 2 (complete) (1) <i>Ex parte McCordle</i> ; <i>Baker v. Carr</i> ; <i>Nixon v. US</i> ; <i>Flast v. Cohen</i>

**OCT 6 WEDNESDAY FIRST EXAMINATION-- BRING UNMARKED "BLUE" BOOKS**  
(REVIEW SHEET WILL BE DISTRIBUTED & Review Session Arranged)

Oct 8-13	Powers of Congress: I; Epstein/Walker, <b>C.L.F.C.A</b> #3. (3) <i>Powell v. McCormack</i> ; <i>Gravel v. US</i> ;  (4) < <i>US Term Limits v. Thornton</i> >  (5) <i>McCulloch v. Maryland</i> ; <i>McGrain v. Daughterly</i> ; <i>Watkins v. US</i> ;  (6) <i>Barenblatt v. US</i> ; <i>US v. Curtiss-Wright</i> ; <i>S.C. v. Katzenbach</i> ,
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**OCT 18 (Mon) Law School Fair - UMC Ballroom 10am- 2pm NO CLASS**

The Executive--Presidential Power- Domestic Affairs:

Oct 15-25	Epstein/Walker, <b>C.L.F.C.A.</b> , #4. (7) < <i>Bush v. Gore</i> > ((Toobin, <b>The Nine</b> , ch. 11-15.) (8) <i>In re Nagel</i> ; <i>Clinton v. NYC</i> ; <i>Morrison v. Olson</i>  (9) <i>Myers v. US</i> ; <i>Humphrey's Executor v. US</i> ; <i>US v. Nixon</i> .  (10) <i>MS v. Johnson</i> ; <i>Nixon v. Fitzgerald</i> ; <i>Clinton v. Jones</i> . ((Toobin, <b>The Nine</b> , ch.9.)  (11) <i>Ex parte Grossman</i> ; <i>Murphy v. Ford</i> . <i>US v. Cutriss-Wright</i> .
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Oct 27-29 The Separation of Powers Domestic and War and Emergencies  
Epstein/Walker, C.L.F.C.A, #5  
(12) *Mistretta v. US*; *I.N.S. v. Chadha*; (Louis Fisher article in St Louis Law R.);  
*Bowsher v. Synar*  
  
(13) *The Prize Cases* ; *Ex parte Milligan*; *Ex parte Quirin* ; *Korematsu v. US*  
  
(14) *Youngstown Sheet & Tube v. Sawyer*; *US v. Curtiss-Wright* ; *Dames & Moore v. Regan*  
  
(15) *Hamden v Rumsfeld*; (Toobin, *The Nine*, ch. 18 and 24 (pp. 319-324).)

(CHAPTER SEQUENCE SHIFT)

Nov. 1-3 Economic Liberties-Substantive Due Process  
Epstein/Walker, C.L.F.C.A, #10 and Intro.  
(16): *The Slaughterhouse Cases*; *Munn v. Illinois*; *Allgeyer v. LA*  
  
(17) *Lockner v. N.Y.*; *Muller v. OR*; *Adkins v. Children's Hospital*  
(18) *Nebbia v. NY*; *West Coast Hotel v. Parrish*; *Williamson v. Lee Optical*;  
(19) *BMW v. Gore*; *Caperton v. Massey Coal*.

**NOV 5 FRIDAY SECOND EXAMINATION -- BRING NEW "BLUE" BOOKS**  
(REVIEW SHEET WILL BE DISTRIBUTED & Review Session Arranged)

III—FEDERALISM (CHAPTER SEQUENCE SHIFT BACK)

Nov 8 Epstein/Walker, C.L.F.C.A, #6 and Intro. to III  
Doctrine (20) *McCulloch v. Maryland* ; *Scott v. Sandford*;  
*Hammer v. Dagenhart* .  
  
Nov 10 (21) << *National League of Cities v Usery*; *Garcia v. San Antonio Transit*; >>  
*N. Y. v. US*; *Printz v. US*  
  
Nov 12 (22) *Alden v. Maine*; *Michigan v. Long*  
  
(23) *Missouri v. Holland*; *Crosby v. National Foreign Trade Council*; *PA v. Nelson*;  
*P.G.& E. v. CA State Energy Resources Conservation & Develop. Comm.*  
  
Nov 15 The Commerce Power: Epstein/Walker, C.L.F.C.A, #7 and Intro  
(24) *Gibbons v. Ogden*; *US v. E. C. Knight Company*; *Stafford v. Wallace*  
  
Nov 17 The Supreme Court and the New Deal  
(25) *Schechter Poultry Corp. v. US*; *Carter v. Carter Coal Co*; *NLRB v. Jones & Laughlin Steel*; *Wickard v. Filburn*  
  
Nov 19 (26) Commerce and Federal Police Power. *US v. Lopez*; << *US v. Morrison*; >>  
<< *Gonzales v. Raich*; >> (Toobin, *The Nine*, ch. 6 pp.81-85.)  
  
**Nov 22-26 FALL BREAK & THANKSGIVING HOLIDAY**  
  
Nov 29 (27) *Champion v. Ames*; *Heart of Atlanta Motel v. US*

- Dec 1 Commerce Power of the States  
*(28) Cooley v. Board of Wardens; Southern Pacific v. AZ; Hunt v. Washington State Apple Ad. Comm.; Maine v. Taylor; Granholm v. Heald.*
- Dec 3-6 **(29) Taxing and Spending: Epstein/Walker, C.L.F.C.A, #8** (pp. 492-503.)  
*Pollock v. Farmers' Loan & Trust.*
- (30) The Contract Clause: C.L.F.C.A, #9**  
*Fletcher v. Peck; Trustees of Dartmouth College v. Woodward*
- (31) Charles R. Bridge v. Warren Bridge; Stone v. MS;**  
*Home Building and Loan v. Blaisdell.*
- (32) US Trust v. NJ; Allied Steel v. Spanmaus**
- Dec 8-10 Takings Clause Epstein/Walker, C.L.F.C.A, #11 and Intro.  
**(33) US v. Causby; Penn Central v City of NY; ; Nollan v. CA Coastal Comm'n;**  
*Lucas v. S.C. Coastal Council*
- “Public Use”  
**(34) Berman v. Parker; Hawaii Housing v. Midkiff; <<Kelo v. City of New London>>**
- Dec 10 Catch Up and Review**

**FINAL EXAMINATION—DEC 15 WEDNESDAY –1:30 PM -- 4:00 PM**  
(REVIEW SHEET WILL BE DISTRIBUTED & Review Session Arranged)

**UNIVERSITY RULES DO NOT ALLOW EARLY EXAMS TO BE GIVEN**