

Fall 9-1-1997

PSC 471W.01: Constitutional Law I- Federalism and Separation of Powers

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Lopach, James J., "PSC 471W.01: Constitutional Law I- Federalism and Separation of Powers" (1997). *Syllabi*. 8498.
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PSc W471
Con Law I: Federalism and Separation of Powers
Fall 1997

The course deals with governmental power in the American political system, especially its source, nature, and conflicts. Two constitutional principles provide the critical perspectives: separation of powers and federalism. The discussion of separation of powers will treat national governmental powers in terms of legal and political relationships between federal courts, Congress, the president, and the bureaucracy. Examples of topics are judicial review, delegation of legislative power, legislative investigations, and presidential war power. The discussion of federalism will cover the powers of the states with emphasis on tensions resulting from distribution of powers between the central and state governments. Important themes will be state police powers and state regulation and taxation of interstate commerce. Opinions of the United States Supreme Court will serve as the basis of class discussion.

INSTRUCTOR: Jim Lopach, 243-4829, LA 348

CLASS FORMAT: Students are expected to complete reading assignments prior to class meetings. In class, students will be called upon to present analyses of Supreme Court opinions. The instructor will lead discussion and lecture as required. Class discussion will concentrate on the meaning and significance of case principles, evolution of doctrine, and related contemporary problems of a practical nature.

READING ASSIGNMENT: Seven to ten pages per class meeting.

WRITING ASSIGNMENT: Each student will write four essays on topics central to the course. The essays will be typewritten, no more than two pages in length, and assigned several days prior to their due date. Grading will be based upon content (clarity and validity of argument) and correctness of writing (grammar, syntax, and logical development).

EXAMINATIONS: The midterm examination date will be announced one week in advance. The final examination, which will cover material from the midterm to the end of the course, is scheduled for Thursday, December 18, 8:00-10:00 a.m.

GRADE: Class attendance and participation	- 10% (20 points)	A=180-200 points
Essays	- 30% (60 points)	B=160-179 points
Midterm Examination	- 30% (60 points)	C=140-159 points
Final Examination	- 30% (60 points)	D=120-139 points
		F= 0 -119 points

HOLIDAYS: Tuesday, November 11
Wednesday-Friday, November 26-28.

TEXT: Mason and Stephenson, American Constitutional Law, 11th Edition

DROP DEADLINE: October 13 is the last day to drop a course.

Constitutional Law I
Fall 1997
Writing Assignments

1. Essay on judicial review. In a two-page, double-spaced essay argue either for or against judicial review as it has come to be practiced in the United States. The introductory paragraph should define judicial review, present a clear thesis statement, and preview your arguments and the order of their appearance. Each of the following paragraphs should be devoted to one of your points of argument. A concluding paragraph is not necessary. You may submit a revision of this essay. In your writing use clear transitions both within and between paragraphs, precise and simple diction, direct and straight-forward syntax, the active voice, and brief quotations. Remember that good writing flows from good thinking and the willingness to revise.

2. Essay on an instructor-assigned course topic. Follow the general directions for the judicial review essay.

3. Essay on a recent Supreme Court case. In a two-page, double-spaced essay summarize either the majority opinion or the principal dissenting opinion in one of the following 1997 Supreme Court Cases: Printz v. United States (the Brady Act case), Clinton v. Jones, (the sexual harassment lawsuit against the President), or City of Boerne v. Flores (the Religious Freedom Restoration Act case). Work from the full report of the case, copies of which are in the Mansfield Library reserve room, the federal documents section of the Mansfield Library, and the Law Library stacks on the first floor on the west side. Follow the general writing guidelines above. In addition to these instructions, organize your essay as follows: Paragraph 1 - give a brief overview of your essay including its topic, organization, and major points; Paragraph 2 - identify and explain one of the opinion's key legal arguments; Paragraph 3 - identify and explain a second key legal argument in the opinion; and Paragraph 4 - identify and explain the most important political implications of the decision.

4. Essay on law review article. In a two-page, double-spaced essay summarize the argument of a law review article which deals with a constitutional law topic covered in this course. Follow the general writing guidelines presented above. To locate law review titles, use the Current Index to Legal Periodicals (copies for 1989 to 1996 are located in binders in the Political Science office). For example, in the issue for August 9, 1996, is the entry: "Scott, John M. Note. Constitutional law — Supreme Court invalidates federal Gun-Free School Zones Act. (United States v. Lopez, 115 S. Ct. 1624, 1995.) 18 U. Ark. Little Rock L.J. 513-531 (1996)." Law reviews are found in the Law Library on the east and west balconies. The instructor must approve your selection of a law review article.

Review Sheet for PSc 471 Midterm Examination

judicial review	certiorari (rule of 4)
court packing	judicial power
original jurisdiction	appellate jurisdiction
federal question jurisdiction	diversity jurisdiction
exceptions clause	supremacy clause
3-judge district court	Ashwander rules
threshold question	case or controversy
standing-to-sue test	justiciability
political question	partial agency
departmentalism	legislative veto
literalism	original intent
structuralism	legal realism
sociological jurisprudence	legal idealism
partisan gerrymander	malapportionment
nondelegation doctrine	intelligible principle
rule of pertinency	equity powers
power to remove	power to exclude
presidential prerogative	presidential perspective

Scott v. Sanford (dissent): ". . .having decided that this plea showed that the Circuit Court had no jurisdiction, and consequently that this is a case to which the judicial power of the United States does not extend, they have gone on to examine the merits of the case. . . ."

Missouri v. Jenkins: "We have emphasized that although the 'remedial powers of an equity court must be adequate to the task. . . .they are not unlimited,' and one of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of local government institutions."

Baker v. Carr: "We have no question decided, or to be decided by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad. . . .Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking."

"Unstaged Debate of 1986" (Professor Tribe): "To begin with, the very generality of many of the terms the Framers used -- such as 'liberty,' 'due process,' and 'equal protection' -- strongly suggests an intent not to confine their meaning to the specific outcomes and contexts that occurred to those who first used them, but to invite the development of meanings in light of the needs and insights of succeeding generations. . . ."

I.N.S. v. Chadha (dissent): "The prominence of the legislative veto mechanism in our contemporary political system and its importance to Congress can hardly be overstated. It has become a central means by which Congress secures the accountability of executive and independent agencies."

Review for PSC 471 Final Examination

eleventh amendment	residual powers doctrine
Hodel three-prong test	Cooley doctrine
partial agency	appointments clause
external sovereignty	implied powers doctrine
protectionist measure	cooperative federalism
dual federalism	executive privilege
intergovernmental tax immunity	implied preemption test
commerce/protective principle	commerce/formal analysis
commerce/empirical analysis	Shreveport doctrine
cumulative effect doctrine	executive order
market regulator/participant	inherent national power
state tax/interstate commerce test	Bricker amendment
emergency prerogative theory	presidential immunity
good-faith immunity	defensive war doctrine
state police power	supremacy clause
dormant commerce power	original package doctrine
independent and adequate state grounds	concurrent jurisdiction
interstate commerce balancing test	national police power
compact theory of consent	reserved powers
emanation theory of consent	qualification clauses
commercial/non-com'l. transaction	general welfare clause
independent constitutional bar	War Powers Resolution
core of state sovereignty	enumerated powers model
federal commandeering of states	quarantine law

"The spending power is of course not unlimited, but is instead subject to several general restrictions articulated in our cases."
(South Dakota v. Dole, 1987)

". . . the words of the constitution. . . give to the supreme court appellate jurisdiction in all cases arising under the constitution, laws, and treaties of the United States. The words are broad enough to comprehend all cases of this description, in whatever court they may be decided. . . . (Cohens v. Virginia, 1821)

"For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce, and that in such cases, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests." (Southern Pacific v. Arizona, 1945)

"In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." (Youngstown Co. v. Sawyer, 1952)

". . . the attempt to draw the boundaries of state regulatory immunity in terms of 'traditional governmental function' is not only unworkable but is inconsistent with established principles of federalism. . . ." (Garcia v. SAMTA, 1985)

PSc 471 -- Second Writing Assignment

You are an assistant White House counsel, and the President has sought your opinion concerning the legality of the following possible course of action. To quell heightened tensions between Israel and Syria, the President contemplates committing United States ships, planes, and troops to the waters of the East Mediterranean. The President anticipates notifying Congress of his intended action but not consulting with congressional committees or leaders. Present your advice to the President in a two-paged, double-spaced essay that is organized along the following lines: Paragraph 1 - your task and the facts of the situation (assume and state any necessary additional facts); Paragraph 2 - the constitutional questions that need to be addressed and your answers; Paragraphs 3 and 4 - two lines of reasoning that support your recommendation and that are taken from Prize Cases, Curtiss-Wright, Korematsu, Youngstown, and the 1973 War Powers Resolution. The essay is due on November 5, but any essay received on or before October 31 will be viewed benevolently.