ROCKY MOUNTAIN COLLEGE

Constitutional Law

Course Syllabus:
Fall 2012

POL 412
TTh 10:00-11:15
Bair Hall 104

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Office Hours: TTh 11:30-12:45, and *all day* MWF (by appointment)
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Course Description:

Following a case-method approach, this course serves as an advanced study of American Law and legal decisionmaking. Our focus will be on landmark decisions of the Supreme Court, with an emphasis on the doctrine of judicial review and the role of the Court in interpreting the Constitution and shaping American legal culture. Throughout the course will discuss the exercise and limitations of federal power in the areas of the economy, civil rights, and individual liberties, as well as the Constitutional basis on which statutes and other regulatory provisions are adjudicated. Special attention will be given to Constitutional clauses related to free speech, due process, and equal protection under the law.

Additionally, we will discuss competing legal theories in order to gain an understanding of how the Court operates as the final arbiter of the law, and its role as a check on the legislative and executive branches of government. Through reading and briefing a series of landmark cases, we recognize that Court opinions (including concurring and dissenting opinions) shape future legislative behavior, and we can understand American law as a process of evolution that exists under a "living" Constitution.

Finally, we will spend considerable time reflecting on the Court as a political institution – rather than a strictly legal one – in order to gain greater appreciation for the extralegal considerations that affect the thought processes of Supreme Court Justices. The Court is but one of three co-equal branches of government, and a careful reading of its decisions bear witness to a definite and particular self-awareness of this fact.

Required Readings:

Frederic Bastiat, *The Law* (Dean Russell translation)
William Blake, "Umpires as Legal Realists" (handout)
Steven Burton, *An Introduction to Law and Legal Reasoning* (recommended)
Ross Douthat, "Justice Roberts' Political Decision," *New York Times*, 6/28/12
Lee Epstein and Thomas Walker, *Constitutioal Law for a Changing America: A Short Course* (Fifth Edition)

Supplemental readings will be handed out in class or can be obtained online.

Assessment Outcomes:

In this course, the following History & Political Science major assessment criteria are advanced:

1. Analyze, interpret, and critically evaluate major political issues and/or historical events;
2. Demonstrate familiarity with the major theories and thinkers in the field;
6. Understand the difference between opinions and substantiated scholarly claims;
7. Effectively utilize and appropriately cite academic sources;
8. Write papers essentially free of errors in grammar, mechanics, and spelling.

Course Policies:

The first requirement of each student is to understand that this is an academic environment and as such it is necessary that there is a high degree of civility, respect for fellow students, and respect for the material. You are expected to do *all* assigned readings, and you must participate in class if you hope to earn a passing grade.

1. Missed Classes: This course covers a great deal of material and meets just twice a week; therefore repeated absences will not be tolerated. Students are allowed three absences, regardless of circumstance. Subsequent absences will result in your course grade being rescaled down by 1/3; i.e. a student with six absences will have their final grade reduced 1 point on a 4.0 scale.
2. Missed Assignments: If you do not turn in a graded assignment your maximum grade in the course will be rescaled along a 90/80/70/60 scale; i.e. if you fail to hand in a paper worth 20 percent of your grade, your highest possible grade in the class will be a B, regardless of your average on a 4-point scale.
3. Late Papers: Papers will lose one full letter grade per class session late. No exceptions.
4. Plagiarism and Cheating: Neither will be tolerated, and if a student is caught doing either they will fail the course and I will recommend to the Dean of Students that said student be expelled from school.
5. Electronic Devices: the use of any electronic device is strictly prohibited in this course. This includes e-readers, as I will not participate in the demise of the written word.
6. Email: I check my email daily but I prefer not to use it as a means of conversation. Email should be used only for quick, non-emergency questions and for setting up appointments for face-to-face meetings in my office. Also, for institutional as well as technological reasons, only communicate with me via your official @rocky.edu account.

Graded Assignments:

Case Briefs:

Each student is required to brief several cases throughout the semester, the number of which will be determined by enrollment (to ensure parity). Briefs are one-page analyses of landmark cases, and will follow the standard format of issue, rule, application, conclusion (IRAC). We will spend an entire class session discussing the IRAC method, and I will give out several handouts to guide you in writing your briefs.

In addition, students must bring printed copies of briefs to distribute to your classmates, in an effort to make the course more collaborative and integrated.

Midterm Exam:

On October 18 (week 8 of the semester) we will have an in-class midterm exam on the case law dealing with the institutional powers vested by the Constitution. We will have a brief review the session prior to the exam, and you will be given explicit guidelines for studying.

It is my philosophy that exams should be completely predictable in the sense that students will know exactly what is expected of them before they walk in the room. You will encounter no trick questions. This will give students the opportunity to showcase what they *do* know, rather than to try to get at what they *don't*.

Final Exam:

On December 10 (Monday) we will have an in-class final exam on the case law studied in the second half of the course, which deals primarily with civil rights and liberties. As with the midterm, we will have a brief review session prior to the exam.

Reading Quizzes:

There will be numerous quizzes given throughout the semester, the exact number will depend on rates of participation in course discussions and whether students come to class prepared. Reading quizzes are rudimentary examinations used to determine who is and who is not doing assigned readings; a student who fails a quiz will be counted absent for that class session, thus diminishing their overall grade as delineated in Course Policy 1.

Grading:

All papers and exams will be graded on an A-F scale and will be averaged as follows:

Case Briefs:	10 percent
Midterm Exam:	30 percent
Final Exam:	40 percent
Participation:	20 percent

Grading Criteria:

These are the standards I adhere to when I grade essays. Pluses and minuses represent shades of difference, as do split grades (e.g. B-/C+). Grades are based on the evidence of the essay submitted, not on effort or time spent.

A
Excellent in every way (this is not the same as perfect). This is an ambitious, perceptive essay that grapples with interesting, complex ideas; responds discerningly to counter-arguments; and explores well-chosen evidence revealingly. The analysis enhances, rather than underscores, the reader's and writer's knowledge (it doesn't simply repeat what has been taught). There is a context for all the ideas; someone outside the class would be enriched, not confused, by reading the essay. Its introduction opens up, rather than flatly announces, its thesis. Its conclusion is something more than a summary. The language is clean, precise, often elegant. The reader should feel enlightened and educated for having read the paper. There's something new in your analysis, something perhaps only you could have written and explored, in this particular way. The writer's stake in the material is obvious.

B
A piece of writing that reaches high and achieves many of its aims. The ideas are solid and progressively explored but some thin patches require more analysis and/or some stray thoughts don't fit in. The language is generally clear and precise but occasionally not. The evidence is relevant, but there may be too little; the context for the evidence may not be sufficiently explored, so that I have to make some of the connections that the writer should have made clear for me. This is a solid essay whose reasoning and argument may nonetheless be rather routine (the limitation is largely conceptual).

C
A piece of writing that has real problems in one of these areas: conception (there's at least one main idea but it is fuzzy and difficult to understand); structure (non-linear development of your ideas); use of textual evidence (weak or non-existent -- the connections among the ideas and the evidence are not made and/or are presented without context, or are simple platitudes and generalizations); language (the sentences are often awkward, dependent on unexplained abstractions, sometimes contradict each other). The essay may not move forward but rather may repeat its main points, or it may touch upon many (and apparently unrelated) ideas without exploring any of them in sufficient depth and without a developmental flow. Punctuation, spelling, grammar, paragraphing, and transitions may be a problem.
-or- an essay that is largely plot summary or "interpretive summary" of the text, but is written without major problems.
-or- an essay that is chiefly a personal reaction to something. Well-written, but scant intellectual content -- mostly opinion.

D and F
These are efforts that are wildly shorter than they ought to be to grapple seriously with ideas.
-or- those that are extremely problematic in many of the areas mentioned above: aims, structure, use of evidence, language, etc.;
-or- those that do not come close to addressing the expectations of the essay assignment.

Participation:

The majority of class time will be devoted to discussion of the assigned readings. Discussion can include (but is not limited to) an analysis and/or critique of the author's position, a comparison of the assigned work to another text, or debate as to the meaning or merit of a given work (or particular points therein).

Class participation is evaluated on quality rather than quantity. Comments need not mirror the position of the author (or the professor). You are graded not on the "correctness" of your position, but rather on your analysis of the material and your ability to articulate your ideas. You don't have to be at the center of every debate, but students who make little or no effort to enter discussions will receive a lower participation grade. Discussion will become lively, heated even. Always respect the positions of others. When you disagree with someone, be sure to criticize the *idea* and not the person.

Participation will be graded according to the following criteria:

A
The student in this grade range arrives in class each day thoroughly prepared with comments and questions on the assigned reading. Comments reveal that the student has read carefully; this student occasionally initiates the discussion without waiting for the professor to do so. This student does not, however, try to dominate the class, but listens carefully to the remarks made by fellow class members, and responds as readily to these as to the instructor's questions.

B
The student in this grade range participates in most discussions, although not as fully or reliably as the student described above. There is evidence of having done the reading. This student pays attention to the comments of the other students.

C
The student in this grade range participates only intermittently, and is more willing to discuss broad, general questions than to engage in concrete analysis of an assigned text. Sometimes unprepared, this student lacks interest in the ideas of other members of the class, neglects to bring the proper text to class, and is often inattentive.

D or F
The student in this grade range seldom if ever participates.

Things that lower your participation grade:
* Not paying attention in class
* A ringing cellphone
* Talking to your neighbor or holding conversations separate from the class discussion
* A student who is seen using their cell phone for any reason will receive an F as their final grade in the course

NOTE: Unlike paper grades, participation will *not* be given plus/minus or split grades, and your final grade is weighted in a manner such as to make it impossible for you to receive an A for the course if your participation grade is not an A.

Semester Schedule:

Week 1:

8/28

Introduction and Course Outline

8/30

Bastiat, *The Law*

Sections: Life is a Gift from God
What is Law?
The Complete Perversion of the Law
The Proper Function of the Law
Law is a Negative Concept
The Law and Morals
The Superman Idea
Proper Legislative Functions

Week 2:

9/4

Federalist 78
Blake, "Umpires as Legal Realists"

9/6

Epstein and Walker, Part I Introduction, "The US Constitution"
Epstein and Walker, Chapter 1, "The Living Constitution"

Week 3:

9/11

Epstein and Walker, Chapter 2, "Understanding the Supreme Court"

9/13

Guest Lecture: Charles Wilkinson, University of Colorado School of Law

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Week 4:

9/18

Epstein and Walker, Appendix 8, "Briefing Supreme Court Cases"
The IRAC system

9/20

Epstein and Walker, Part II Introduction, "Institutional Authority"
Epstein and Walker, Chapter, 3, "The Judiciary"
Cases: *Marbury v. Madison*
Ex parte McCardle

Week 5:

9/25

Epstein and Walker, Chapter 4, "The Legislature" (87-117)
Cases: *US Term Limits v. Thornton*
United States v. Curtiss-Wright Export Corp.

9/27

Epstein and Walker, Chapter 4, "The Legislature" (117- 125)
Cases: *Mistretta v. US*
INS v. Chadha

Week 6:

10/2

Epstein and Walker, Chapter 5, "The Executive" (127-152)
Cases: *Clinton v. City of New York*
United States v. Nixon

10/4

Epstein and Walker, Chapter 5, "The Executive" (153-177)
Cases: *Korematsu v. United States*
Hamdi v. Rumsfeld

Week 7:

10/9

Epstein and Walker, Part III Introduction, "Nation-State Relations"
Epstein and Walker, Chapter 7, "The Commerce Power"
Cases: *Gibbons v. Ogden*
Gonzales v. Raich

10/11

Epstein and Walker, Chapter 8, "The Power to Tax and Spend" (269-274)
Case: *South Dakota v. Dole*
Epstein and Walker, Chapter 12, "The Takings Clause" (330-338)
Case: *Kelo v. City of New London*

Week 8:

10/16

Midterm Exam

10/18

Midterm Break

Week 9:

10/23

Epstein and Walker, Part IV Introduction, "Economic Liberties"
Epstein and Walker, Chapter 10, "Economic Substantive Due Process"
Cases: *Lochner v. New York*
Adkins v. Children's Hospital

10/25

Epstein and Walker, Part V Introduction, "Civil Liberties"
Epstein and Walker, Chapter 12, "Religion: Exercise and Establishment" (345-364)
Cases: *Sherbert v. Verner*
Employment Division of Oregon v. Smith

Week 10:

10/30

Epstein and Walker, Chapter 13, "Freedom of Speech, Assembly, and Association"

Cases: *Schenck v. US*

Texas v. Johnson

11/1

Epstein and Walker, Chapter 14, "Freedom of the Press"

Cases: *Near v. Minnesota*

Miller v. California

Week 11:

11/6

Epstein and Walker, Chapter 15, "The Right to Keep and Bear Arms"

Cases: *District of Columbia v. Heller*

*McDonald v. City of Chicago**

11/8

Epstein and Walker, Chapter 16, "The Right to Privacy"

Cases: *Griswold v. Connecticut*

Roe v. Wade

Week 12:

11/13

Epstein and Walker, Part VI Introduction, "The Rights of the Criminally Accused"

Epstein and Walker, Chapter 17, "Investigations and Evidence"

Cases: *Mapp v. Ohio*

Miranda v. Arizona

11/15

Epstein and Walker, Chapter 18, "Attorneys, Trials, and Punishments"

Cases: *Gideon v. Wainwright*

Atkins v. Virginia

Week 13:

11/20

Epstein and Walker, Part VII Introduction, "Civil Rights" (603-614)
Epstein and Walker, Chapter 19, "Discrimination"
Cases: *Plessy v. Ferguson*
Brown v. Board of Education

11/22

Thanksgiving Break

Week 14:

11/27

Epstein and Walker, Chapter 20, "Voting and Representation"
Cases: *Citizens United v. FEC*
Bush v. Gore

11/29

Roundtable Discussion and Course Recap: The Court as a Political Institution
Douthat, "Justice Roberts' Political Decision"

Week 15:

12/4

Review for Final Exam

12/6

Individual Tutorials

12/10

FINAL EXAM, 7:45-9:45 am