

# Law 301: The Constitution in Transnational Perspective

4 Credits, Spring Term 2015, W 2-3:50, VKC158

Professor Sam Erman

Office Hours: Wednesday 9:30-11:30 and by appointment

Contact: Musick Law Building 438, serman@law.usc.edu, (213) 740-6372

Professor Erman's Assistant: Shirly Kennedy

Contact: Musick Law Building 401, skennedy@law.usc.edu, (213) 740-2569

## ***Course Description:***

This course examines the Constitution of the United States in transnational perspective, both historically and today. The focus is democracy; slavery, emancipation, and freedom; empire; and governmental structures. The approach is both comparative and dynamic. It is comparative in asking how the U.S. Constitution differs from and resembles the organic charters of other nations (and groups of nations). Such questions clarify what choices the United States and other nations have made and illuminate alternatives that they could have – and still could – pursue. The approach is dynamic in recognizing that members of nations do not act in isolation as they construct constitutional systems. Since the Founding, the men and women who have drafted, construed, and implemented the U.S. Constitution have turned to – and altered – many ideas with foreign pedigrees. In turn, as members of other polities framed, changed, and executed their own constitutional schemes, many have borrowed and reworked aspects of the U.S. approach.

## ***Structure of Class:***

The class will meet once a week for 110 minutes. Instruction will include a mixture of lectures, discussion, group work, and student presentations.

## ***Expectations:***

Students will divide into teams, each of which will work on one of the final four themes for the course (Abolition, Freedom, and Empire; the Post-War U.S. Constitution in the World; Federalism; or Race). Each of these four themes will be covered by at least one team. Each team will be responsible for choosing readings for the class and leading a classroom discussion.

Each student will write 7 response papers and 3 rewrites. Each week, one third of students will be assigned by rotation to rewrite their most recent response paper rather than author a new one. In weeks 5 through 14, students will thus be required to submit a response paper or rewrite each week by attaching it to the discussion on Blackboard for the week in which each assignment is due (thus, a student rewriting a response paper turned in during week 4 would submit the rewrite by attaching it to the discussion thread for week 5). Response papers are due by 8 a.m. on Monday morning the week of class. Response papers should be three paragraphs long. They will be graded on content, grammar, and style. It is expected that they will grapple critically with the week's readings, making an argument rather than merely summarizing the texts. If a student has a response paper due in the week in which the student is presenting, the student's response paper should address readings other than those assigned as part of the student presentations. Grading will be on a check minus, check, check plus scale. Check pluses will be rewarded only for excellent work that is error free. Response papers will be graded down for any

lateness, with each day of lateness resulting in a loss of a grade (check plus to check, etc.). It is my expectation that most students will receive a check minus on their first response paper and then improve throughout the course of the term as they receive and respond to feedback. I consider a check or above to be work in the A range (A- to A+). And while I will not grade you down if your performance tails off as the semester progresses, I will give you the benefit of sustained improvement (Thus, if you receive check minuses on your first four papers and then check pluses on all your other papers and rewrites, I will treat you very nearly as though you only received check pluses throughout the term).

Students are responsible for reading each other's response papers. Students may but need not read each other's rewrites.

Students are expected to attend each class and be on time. Students may be late once without penalty and may also miss one class without penalty. Any additional tardiness or absence will result in an "in-class participation" penalty. Providing advance notice of tardiness or an absence will result in a smaller penalty.

### ***Evaluation:***

7 Response papers (7.5% each; two lowest grades excluded)

3 Rewrites (7.5% each)

In-class participation (15%)

Group presentation (25%)

### ***Required Texts:***

Reid: John Philip Reid, *Constitutional History of the American Revolution*, abridged (Madison, University of Wisconsin Press, 1995)

Scott: Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge: Harvard University Press, 2005)

All other texts will be available on the blackboard site under content.

### ***Assignments***

#### **Part I. Introduction and Overview**

Week 1          A. What are we up to? Scott 1-10

#### **Part II. Historical Topics**

##### Constitutionalism in the Age of Revolutions:

Week 2          U.S. Revolutionary Era ideas of the British system: Reid book

Week 3          A. French-imperial revolutions: Laurent DuBois, "'Our Three Colors': The King, the Republic and the Political Culture of Slave Revolution in Saint-Domingue," *Historical Reflections / Réflexions Historiques* 29 (spring 2003): 83-102;  
Declaration of Rights of Man

B. The U.S. Revolution: U.S. Constitution as of 1792 (through Bill of Rights); Michael J. Klarman, *The Founding Revisited*, 125 HARV. L. REV. 544 (2011) (reviewing PAULINE MAIER, *RATIFICATION* (2010))

Abolition, Freedom, and Empire: The United States and the Spanish Antilles in Relation and Comparison

Week 4 Slavery, emancipation and freedom in Cuba and the United States, part 1: Scott, 11-93; Robert H. Miller, *Law School Confidential*, 3d ed. (New York: St. Martin's Griffin, 2011), 149-160

--Class divides into teams

Week 5 Slavery, emancipation and freedom in Cuba and the United States, part 2: Justice Taney's opinion in *Dred Scott v. Sandford*, 60 U.S. 393 (1857) (read from the start on 399 through the statement of the two issues on page 400, the paragraph spanning pages 401-402, the third paragraph on page 403 through the paragraph spanning pages 426-427, the last paragraph on page 430 through the second full paragraph on page 432, the second full paragraph on page 446 through the first full paragraph on page 452, the final paragraph of the opinion on page 454); Scott 94-128; *Plessy v. Ferguson*, 163 U.S. 537 (1896) (majority opinion and Harlan's dissent)

Writing focus: Thesis and topic sentences

Week 6 A. Emancipation and freedom in Cuba and the United States, part 3: 154-215, 253-269

B. The U.S. imperial turn, part 1: Lanny Thompson, "The Imperial Republic: A Comparison of the Insular Territories under U.S. Dominion after 1898," *Pacific Historical Review* 71 (Nov. 2002): 535-574

Writing focus: Active sentences

Week 7 A. Team 1 Presents

B. The U.S. imperial turn, part 2: Coudert brief and the opinion in *Gonzales v. Williams*, 192 U.S. 1 (1904)

Writing focus: Varied sentence structures and lengths

HALFWAY MARK: By this point in the course, students will be able to gain a preliminary sense of how they are performing in the class. Each will have already received grades on 3 response papers, 1 rewrite, and 0-1 group presentations.

Week 8 A. Team 2 presents

The Post-War U.S. Constitution in the World

B. Japanese Constitution: Constitution of Japan (1947) (skim); Charles Kades, "The American Role in Revising Japan's Imperial Constitution," *Political Science Quarterly* 104 (1989): 215-248

Writing focus: Whichever lesson was skipped due to rewrite

Week 9 A. Team 3 presents

B. German Constitution: Basic Law of the Federal Republic of Germany (1949) (focus on what rights are protected, what the basic structure of the government is, and what seems similar or different to the U.S. approach).

Writing focus: Strong words

Week 10

A. Team 4 presents

B. A charter for the world: The Universal Declaration of Human Rights; Louis Henkin, "The Universal Declaration and the U.S. Constitution," *PS: Political Science and Politics* 31 (Sep. 1998): 512-515; Susan Waltz, "Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights," *Third World Quarterly* 23 (June 2002): 437-448

Week 11

A. Domestic Race Relations & Foreign Affairs: *Brown v. Board of Education*, 347 U.S. 483 (1954); Mary L. Dudziak, "*Brown* as a Cold War Case," *Journal of American History*, 91 (June 2004): 32-42

### **Part III: Contemporary topics**

#### Federalism:

B. The European Union: Jackson & Tushnet: Vicki C.Jackson and Mark V.Tushnet, *Comparative Constitutional Law*, 2d ed. (Foundation Press, 2006), 1012-1040, 1116-1138

Writing focus: No repetition

Week 12

U.S., Canada, Germany, and Switzerland: Jackson & Tushnet: Vicki C.Jackson and Mark V.Tushnet, *Comparative Constitutional Law*, 2d ed. (Foundation Press, 2006), 926-981, 1007-1012

Writing focus: Whatever lesson was skipped due to rewrite

Week 13

A. Team 5 presents

#### Race:

B. Brazil: Verônica Toste Daflon et al., "Race-Based Affirmative Actions in Brazilian Public Higher Education: An Analytical Overview," *Cadernos de Pesquisa* 43 (Jan./Abr. 2013): 302-327; João Feres Júnior et al., "Lula's Approach to Affirmative Action and Race," *NACLA Report on the Americas* (Mar./Apr. 2011): 34-39.

Writing focus: Readability out loud

Week 14

The United States: Jackson & Tushnet: Vicki C.Jackson and Mark V.Tushnet, *Comparative Constitutional Law*, 2d ed. (Foundation Press, 2006), 1167-1199, 1216-1225; *Fisher v. University of Texas at Austin*, \_\_\_ U.S. \_\_\_ (2013).

Writing focus: Number and tense agreement

Week 15

A. Team 6 presents

B. India: Jackson & Tushnet: Vicki C.Jackson and Mark V.Tushnet,  
*Comparative Constitutional Law*, 2d ed. (Foundation Press, 2006), 1252-1282,  
1291-1305, sup. 20, 32-39

Writing focus: Whatever lesson was skipped due to rewrite

Week 16

Wrap-up: Opportunity for students to ask questions about the law, history and culture major; about law school or graduate school; etc.