Course Description: Federal Courts (Spring 2007)

Federal Courts is probably one of the most interesting courses you will take in law school. So much is going on now. We have a “new” Supreme Court primed to rethink the place of judicial review in our constitutional system. Individuals are calling for federal courts to step in and place significant checks on the power of the executive branch of government, even in times of war. There are continuing efforts of Congress to limit what federal courts can do with their jurisdiction. The constitutional scope of habeas corpus review is a matter of debate, as is the relationship of our federal courts to international tribunals. As you can tell from this very partial and brief list of issues, Federal Courts is not a mere civil procedure course; rather, it addresses the constitutional law of the federal court system. And these issues cut across many other areas of the law. Federal Courts thus offers you a way to pull together much of what you have learned in other courses (e.g., administrative law, environmental law, civil rights, complex civil litigation, constitutional law, and international law, among others).

The conventional assumption is that federal courts are courts of limited jurisdiction and, therefore, exercises of authority must be positively justified if they are to be legitimate. The sources of federal court authority (and of limitations on that authority) fall into three categories: constitutional, statutory, and prudential. In reading cases dealing with federal courts, we will take care distinguish among justifications that draw on constitutional provision or principle (e.g., constitutional “standing” doctrines), those that are linked to statutory interpretation (e.g., statutory limitations on the power of federal courts to hear prisoner’s civil rights suits challenging the length or duration of confinement), and those that the Supreme Court follows as a matter of judicial prudence (e.g., abstention doctrines). All justifications rely, to varying degrees, on general principles of federalism and separation of powers.

A number of persons have criticized the prevailing Federal Courts paradigm for being so process-oriented that substantive issues at stake in and people affected by the resolution of federal courts issues are largely ignored. They also argue that the paradigm does not take into account changes in federalism and separation of powers principles that necessarily resulted from the Civil War and the ratification of the Fourteenth Amendment. Finally, they note that the paradigm focuses too heavily on Article III courts and neglects the vast amount of adjudication that currently takes place either before federal judges without tenure or salary protection or in administrative agencies. We will take these criticisms into account during the semester.

We will look at the conventional paradigm and its critics in the context of major historical and current disputes.
**Course grade**

The grade in this course will be based on a three-hour exam. I may also ask you to write a short paper. For example, last year students were asked to develop and present a concept of the rule of law that would help define the proper role for and establish the legitimacy of federal courts (and the Supreme Court); to select an opinion from one of the Supreme Court decisions we studied; and to analyze that opinion in light of the proposed rule-of-law concept.

**The course casebook and general course outline**

The casebook for this course is the fifth edition of *Federal Courts and The Law of Federal-State Relations* (Peter W. Low and John C. Jeffries, Jr.) and its 2006 Supplement. The Low & Jeffries materials are organized according to the prevailing paradigm of Federal Courts casebooks. I will organize the semester’s syllabus in a way that departs somewhat from the editors’ suggested readings in order to facilitate discussion of the impact of new Supreme Court decisions and contemporary debates in the law. We will focus primarily on jurisdiction over cases that “arise under” federal law.

The first issues we will study go to the source of federal judicial power to declare actions of other branches of government unlawful or unconstitutional. *Marbury v. Madison* introduces the concept of the rule of law and the proper role of courts in a rule-of-law system. The political question materials provide an opportunity to look closely at this issue. We will return to these issues throughout the semester, and we will discuss contemporary controversies that implicate the reasoning of *Marbury*.

Next, we will consider a variety of cases in which federal courts not only assume the power to determine the lawfulness of conduct but, also, the power to effectively “make law” in the process. The power to make federal law is discussed differently depending on whether courts are reviewing purely private, tort-like disputes, are reviewing cases in which the United States is a party, are reviewing cases involving federal programs or unique federal interests, or are actually asked to create a cause of action. Whatever power exists must be reconciled with the understanding that the Constitution limits the jurisdiction of the national government in general. Federal courts – like all branches of the national government – are limited by federalism principles. And, of course, federal courts must act consistently with separation of powers constraints.

The cases dealing with state court jurisdiction over federal questions are relevant to how we think about the power of federal courts themselves and the rule of law in our federal system. For example, if state courts *must* accept jurisdiction over federal questions in most cases, the existence of that jurisdiction will have some bearing on whether limitations on lower federal court jurisdiction are consistent with the Constitution. Similarly, the availability of Supreme Court review of state court decisions affects how we think about limitations on lower federal court jurisdiction.
The Eleventh Amendment decisions represent both a discrete set of rules reflecting constitutional limitations on federal court power to hear suits against states and a set of constitutional principles for determining the circumstances under which Congress can make states judicially accountable. The decisions are commonly understood to constitute, in the aggregate, a constitutional common law of federal-state relations linked to an emerging doctrine of state sovereignty. The decisions also establish a body of separation of powers principles. They – and the cases that consider alternative methods (exclusive of federal courts) for holding states accountable – are critically important to our understanding of the rule of law.

Congress’ power to confer jurisdiction on federal courts is not limited to Eleventh Amendment considerations. Article III itself constrains what Congress can do. We will look at a number of cases that discuss Article III constraints on Congress’ power to tinker with both lower federal court jurisdiction and Supreme Court appellate jurisdiction. We will also look at the constitutionality of transferring jurisdiction over federal questions to Article I tribunals. In these decisions, Article III values determine what Congress may do. We will also look at some specific provisions of the Constitution (e.g., the Suspension Clause) that limit Congress.

We will also discuss the standing and related Article III constitutional and prudential constraints on federal court jurisdiction. Finally, we will look at some specific, miscellaneous grants of, and limitations on, federal court jurisdiction.