COURSE OUTLINE

CONSTITUTIONAL LAW

Political Science W3930

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Fall Term 2012

This is a seminar in constitutional law. We will examine major issues of constitutional law primarily through reading and discussion of leading Supreme Court decisions interpreting and applying the Constitution. In doing so, we consider some of the major political, social and economic issues these decisions implicate.

The course materials consist of five volumes containing, among other things, the Constitution and edited versions of the Supreme Court decisions we will discuss. Volumes 1 and 2, consisting of the materials for Parts 1 and 2 of the Course, should be picked up from the Political Science Department Office in Room 710 IAB. I will distribute the remaining volumes of course materials well in advance of the classes at which they will be discussed. At the time you pick up the first two volumes, you will be asked to pay $60, which covers all five volumes, and helps defray the reproduction costs incurred by my law firm. Checks should be made out to Paul, Weiss, Rifkind, Wharton & Garrison LLP.

I also will distribute in advance of each class my introductory and background comments about the cases and issues we will discuss, together with a series of questions you should consider in reading the cases. These questions are intended to help focus your reading of the cases and to prepare for the class discussion. This is a seminar. It is my hope that each class will consist of a lively and stimulating colloquy on the issues of constitutional interpretation reflected in the decisions. I expect each of you to contribute to that conversation and will call upon you to do so. It is therefore important that you read the cases assigned for each class and my comments and questions addressed to them, in advance.

I recommend — but do not require — that you read also:

(1) John Garraty Quarrels That Have Shaped the Constitution — it will give you the background of many of the cases we read; and

(2) Akhil Reed Amar’s The American Constitution, a Biography, an acclaimed analysis of the text of the Constitution from the preamble to the most recent amendment and the circumstances that shaped it.

I believe you will find the cited pages from Garraty accompanying particular assignments well worth reading — for the legal, historical and cultural context of some of the cases on which we will be focusing and for the fun of it. Amar’s book is organized by the provisions of the Constitution in sequential order. You will find it an
enlightening discussion of the Constitution’s text. Both books are available in paperback, but I will ask that copies be available in the Library.

At our first class on September 4, I will share my thoughts about the course with you and provide some background that I hope will be useful to your reading and discussion of the cases.

I will expect you to have read the Constitution before that first class, focusing especially on Articles I through VII, and Amendments 1-10 and 13-15. I also ask you to read the Articles of Confederation so you can see just what the Framers were replacing when they wrote the Constitution in 1787 and two essays from the Federalist, written by James Madison. The Federalist essays were written by Madison, Alexander Hamilton and John Jay during the debates on the ratification of the Constitution in 1787 and 1788. I will distribute further historical comments and questions you should consider for the first class during the last week of August.

Classes will follow the course outline below.

**PLEASE NOTE:** In addition to our regularly scheduled classes, we will visit the U.S. Supreme Court on Tuesday, October 2, hearing oral arguments in the morning and meeting with Justice Ginsburg at 2:00 P.M. in the Lawyers Lounge. This means we will need a make-up class, which I have tentatively scheduled for Wednesday, October 3, subject to discussion with you.

**Tuesday, September 4**

**Introduction**

The Articles of Confederation; The U.S. Constitution and Amendments;

Federalist Nos. 10 and 51.

**Part 1. Separation of Powers and Judicial Review**

**Tuesday, September 11**

Const., Art. I, § 1; § 7; § 8; § 9; § 10; Art. II, § 1, cl. 1, § 2, cl. 1; Art. III, §§ 1 and 2, cl. 1 and 2.

Federalist No. 78; Marbury v. Madison; Section 13 of the Judiciary Act of 1789; Garraty, pp. 7-19; Essay: Supreme Court Adjudication and the Qualifications of Supreme Court Nominees.
**Tuesday, September 18**

United States v. Nixon; Korematsu v. United States (I); Korematsu v. United States (II);* Youngstown Sheet & Tube v. Sawyer (The Steel Seizure Case); Memorandum for William J. Haynes II re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States;* and Article 3 of the Third Geneva Convention.*

**Tuesday, September 25**

Military Order of November 13, 2001; Hamdi v. Rumsfeld; Boumediene v. Bush; supplemental information concerning the Constitution and Counter-Terrorism after 9/11 to be announced.

**Tuesday, October 2**

Trip to Washington, D.C. to hear arguments at the Supreme Court and meet with Justice Ginsburg.

**Part 2. Federalism: The Congress and the States**

**Wednesday, October 3**


* Optional reading.

** Tentative date for make-up class.
Tuesday, October 9


Part 3. Due Process of Law

Tuesday, October 16

A. Procedural Due Process

Const. Amendments IV, V, XIV, § 1.

Gideon v. Wainwright; Turner v. Rogers.

Garraty, pp. 335-50.

B. Substantive Due Process

Const. Amendments V and XIV.

Lochner v. New York; West Coast Hotel Co. v. Parrish; Griswold v. Connecticut; Roe v. Wade.

Garraty, pp. 193-208; 266-284; 351-379.

Tuesday, October 23

Planned Parenthood v. Casey; Gonzales v. Carhart; Bowers v. Hardwick; Lawrence v. Texas.

Part 4. Equal Protection

A. Race

Const. Art. I, § 2, bracketed portion of cl. 3; Art. I, § 9, cl. 1; Art. IV, Section 2, bracketed cl. 3; Art. IV, Section 3, cl. 2; Art. VI, cl. 2 and Amendments V, XIII, XIV, XV.
Tuesday, October 30

Prigg v. Commonwealth of Pennsylvania; Dred Scott v. Sandford; The Slaughterhouse Cases; Civil Rights Cases of 1883; Plessy v. Ferguson; Brown v. Board of Education (Brown I); Brown v. Board of Education (Brown II); Cooper v. Aaron.


Tuesday, November 13


Tuesday, November 20

B. Gender and Sexual Orientation

Frontiero v. Richardson; United States v. Virginia; supplementary materials on the Defense of Marriage Act (DOMA) and gay marriage issue to be announced.

Part 5. Freedom of Expression

Tuesday, November 27


Tuesday, December 4