

REVISED SYLLABUS and COURSE OUTLINE

CONSTITUTIONAL LAW

Political Science UN3930

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This is a seminar in constitutional law. We will examine some 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 jurisprudential, political, social and economic issues these decisions implicate and whether the decisions promote such values as democracy, equality, individual liberty, and the rule of law.

Course Materials And Additional Readings

The course materials consist of seven volumes containing, among other things, the Constitution and edited versions of the Supreme Court opinions we will discuss. Volumes 1, 2, and 3 consisting of the materials for Part 1 of the course, will be available to be picked up from the Political Science Department Office in Room 710 IAB beginning Friday, September 2. I will arrange for distribution of 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 three volumes, you will be asked to pay \$60, which covers all seven volumes, and helps defray the reproduction costs incurred by my law firm. Checks or money orders should be made out to Paul, Weiss, Rifkind, Wharton & Garrison LLP. The Political Science Department Office will not accept cash.

In addition to these course materials, I will distribute by email, 4 or 5 days in advance of each class, my comments providing background and context for the cases and issues we will discuss in that class, and a series of questions you should consider in reading the cases and preparing for class discussion.

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 and other readings. 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 materials assigned for each class and my comments and questions addressed to them, in advance of the class.

For additional background, I recommend — but do not require:

(1) 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 amendments, and the circumstances that shaped it.

(2) Laurence Tribe and Joshua Matz, Uncertain Justice: The Roberts Court and the Constitution—a review of the evolution of constitutional law during Chief Justice Roberts' tenure from 2005 through the Supreme Court Term ending in June 2013, by one of the leading constitutional scholars.

(3) John Garraty Quarrels That Have Shaped the Constitution — it will give you the background story of some of the cases we read. I indicate in the syllabus the pages of Garraty that relate to the assignment.

I will ask that copies be available in the Library.

The constitutional issues we discuss are a critical part of American history, politics and culture. Accordingly, you also will find in my introductory comments for each assignment, other suggested readings related to the topic of that assignment that you may wish to pursue at your leisure for greater background and pleasure.

Papers and Grades

Grades for the course will be based in principal part (but not exclusively) on a 7500-9000 word research paper (approximately 25-30 double spaced pages) due at the end of the course. I will provide more detail on this early in the semester. There also will be at least one short paper, of no more than 2000-2500 words (about 8-10 double spaced pages) during the semester. These papers, as well as your contribution to class discussion, will be taken into account in determining your final grade.

PLEASE NOTE: *Supreme Court Visit and Meeting with Justice Ginsburg*

In addition to our regularly scheduled classes, we will visit the U.S. Supreme Court on Wednesday, October 5, hearing oral arguments in the morning and meeting privately with Justice Ginsburg at 12:15 P.M. in the Court's Lawyers Lounge. Your participation in this visit is not obligatory, but strongly recommended. In the past, virtually everyone in the class has made this trip with me and found both the opportunity to watch the Court in action and the private meeting with Justice Ginsburg to be an enriching and memorable experience. It is well worth any inconvenience of missed classes and travel to Washington.

Reading Assignments

Weekly reading assignments will follow approximately the outline below, with adjustments as we proceed. In addition to the cases and materials listed, I also consider you responsible for the information contained in the comments I circulate in advance of each class, along with questions I then ask you to think about as you prepare for our class discussions.

Here are the assignments:

Thursday, September 8

Introduction

At our first class on September 8, I will share my thoughts about the seminar with you and provide some background that I hope will be useful to your reading and discussion of the cases. It would be helpful if you could read the Constitution before this class.

Below is the outline for the rest of the semester.

Part 1. The Constitution as Framework for Governance: Separation of Powers and Federalism

Thursday, September 15—Origins of the Constitution; The Role of the

Supreme Court

1. ***The Constitution and Its Origins.*** The Articles of Confederation; James Madison on the Vices of the Political System of the United States; the Virginia Plan; The U.S. Constitution and Amendments; Federalist Nos. 10 and 51.
2. ***The Judicial Power and Its Limits.*** Federalist No. 78; *Marbury v. Madison*; Constitution, Article III; Section 13 of the Judiciary Act of 1789
Garraty, pp. 7-19.*

Thursday, September 22— Judicial Power and Its Limits Continued;

Interpreting the Constitution

Const. Art. I, § 8; Art. VI, cl. 2; Amendment X

1. *Judicial Power and Its Limits Continued*

Marbury and the scope and limits of judicial power continued;

* Asterisked items are optional readings.

2. *The Court's Role as Interpreter of the Constitution*

McCulloch v. State of Maryland; Arizona State Legislature v. Arizona

*Independent Redistricting Commission; Essay: Supreme Court Adjudication and the Qualifications of Supreme Court Nominees**

Thursday, September 29—Congress's Powers and Limits—The Commerce and Necessary and Proper Clauses and Federalism

Const. Art. I, §§ 8, 9, 10; Art. VI, cl.2; Amendment X

*Gibbons v. Ogden; Hammer v. Dagenhart; National Labor Relations Board v. Jones & Laughlin Steel Corp.; United States v. Darby; Wickard v. Filburn; United States v. Lopez; United States v. Morrison**.

Garraty, pp. 21-69.*

Wednesday, October 5—Visit to Supreme Court and Meeting with Justice

Ginsburg

Note: I will supply information about the cases we will hear argued in advance of the trip

Thursday, October 6—Congress's Powers and Federalism Continued;

The Commerce and Necessary and Proper Clause and Federalism Cont'd:

*Gonzales v. Raich; Printz v. United States**; *National Federation of Independent Businesses v. Sebelius* (the Affordable Care Act Case).

Thursday, October 13— Executive Power and Its Limits

Const. Art. II

1. Executive Power and Congress *Youngstown Sheet & Tube v. Sawyer;*

Zivotofsky v. Kerry; Federalist No. 76; National Labor Relations Board v. Noel Canning

2. Executive Privilege *United States v. Nixon*

Thursday, October 20— The President as Commander in Chief: War, Terrorism, and Civil Liberties

Const. Art. I, § 8, Cl. 10-16; Act II, § 2, Cl. 1 (first sentence)

1. World War II and The Japanese Internment Case *Korematsu v. United States* (I); *Korematsu v. United States* (II)*
2. 9/11 and Detention and Interrogation *Authorization for the Use of Military Force (AUMF)*; *Military Order No. 1 of November 13, 2001*; *Memorandum for William J. Haynes II re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States*; *Article 3 of the Third Geneva Convention*; *Hamdi v. Rumsfeld*; *Boumediene v. Bush**
3. The Use of Lethal Force *War Powers Resolution of 1973*; *Department of Justice Memorandum, Authority to Use Force in Libya*; *Al-Aulaqi v. Panetta*; *Department of Justice White Paper, Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is A Senior Leader of Al-Qaida or An Associated Force*; *President Obama's Speech on Drone Policy*

Part 2. The Civil War Amendments

Thursday, October 27—Slavery and Race; Racial Equality

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.

1. **The Constitution and Slavery.** *Prigg v. Commonwealth of Pennsylvania*;* *Dred Scott v. Sandford.*
2. **The Fourteenth Amendment Privileges and Immunities and Equal Protection Clauses; Racial Equality.** *Civil Rights Act of 1866; 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.*
Garraty, pp. 87-99, 157-174, 307-333.*

Thursday, November 3—Racial Equality Continued

1. **Affirmative Action.** *Grutter v. Bollinger; Gratz v. Bollinger*;* *Parents Involved v. Seattle School District; Fisher v. University of Texas at Austin (Fisher I) Fisher v. University of Texas at Austin (Fisher II)*
2. **The Fifteenth Amendment and Voting Rights.** *Shelby County, Alabama v. Holder -- Consequences*

Thursday, November 10—Gender Discrimination; Due Process

- Const. Amendments V, XIV and XIX.
1. **Gender Discrimination.** *Frontiero v. Richardson; United States v. Virginia.*
 2. **Procedural Due Process: The Right to Counsel.**
Const. Amendments IV, V, XIV, § 1.
Gideon v. Wainwright; Turner v. Rogers.
Garraty, pp. 335-50.*

Thursday, November 17—Substantive Due Process

1. **Economic Liberty.**

Const. Amendments V and XIV

Lochner v. New York; West Coast Hotel Co. v. Parrish; U.S. v. Carolene

Products Co.

2. **Reproductive Rights – Privacy and Autonomy.** *Griswold v. Connecticut; Roe v. Wade.*

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

Thursday, November 24--Thanksgiving Holiday

Thursday, December 1—Reproductive Rights Continued; Sexual Orientation and the Convergence of Due Process and Equal Protection

1. **Reproductive Rights Continued.** *Planned Parenthood v. Casey; Gonzales v. Carhart**; *Whole Women’s Health v. Hellerstedt*
2. **Sexual Orientation: The Convergence of Due Process and Equal Protection.**
 - A. **Sexual Orientation Discrimination.** *Bowers v. Hardwick; Romer v. Evans; Lawrence v. Texas*
 - B. **Same-Sex Marriage.** *United States v. Windsor; Obergefell v. Hodges.*

Part 3. Freedom of Speech and Press

Friday, December 8 -- Criminal Advocacy; Defamation; Prior Restraints; and Campaign Finance

1. **Criminal Advocacy.** *Schenck v. United States; Abrams v. United States; Whitney v. California; Dennis v. United States; Brandenburg v. Ohio*
2. **Seditious Libel and Defamation.** *New York Times Co. v. Sullivan*

3. **Prior Restraints and Leaks of Government Secrets.** *New York Times Co. v. United States*(The Pentagon Papers Case)
4. **Campaign Finance; Closing Reflections--***Buckley v. Valeo; Citizens United v. Federal Election Commission; Arizona Free Enterprise Club v. Bennett*; a professor's reflections on the Supreme Court and constitutional law today; farewell