

SPRING 2018 AMERICAN CONSTITUTIONAL LAW V53.0330 001

Mondays 5:00-7:35pm

19 West Fourth Street, Room 101

Instructor: Dr. Peter V. Rajsingh: pr9@nyu.edu Mon 4-5pm and by appointment

Course Assistants: Raja Panjwani rp2662@nyu.edu Monday 12:30-1:30pm Room 420

and Michael Becker mb4959@nyu.edu Thursday 1:00-2:00pm Room 321

Grader: Golshad Babai gb1153@nyu.edu

This course examines the major contours of the American Constitution excluding the Bill of Rights. We will discuss constitutional law in the broader framework of social and political philosophy and explore evolution of judicial doctrine and jurisprudential theory through constitutional history. We will consider the Supreme Court as an institution in the context of autonomy claims concerning politics and adjudication, law and morality, legal positivism and realism, etc., and the extent to which these bear upon an enduring anxiety about judicial legitimacy, justification and interpretation.

The two major themes that run through most of the cases are federalism and separation of powers.

The course is devoted to close reading of Supreme Court cases and Law Review articles with Socratic discussions in class. Preparing cases and materials in advance along with regular attendance and active class participation are absolutely essential. Failure to participate will have a material adverse bearing upon final grades.

There will be a midterm and final examination, several short announced quizzes and a legal opinion writing assignment (approximately 8-10 pages) based on a hypothetical fact pattern. All of the foregoing shall count towards the final grade.

This is a paperless class. All readings are available electronically on the internet or posted on NYU Classes.

Useful URLs: <http://www.oyez.com/cases>; law.cornell.edu; findlaw.com; fedworld.gov/supcourt/index.htm; law.upenn.edu/conlaw;

COURSE OUTLINE:

WEEK 1

How to Read a Case

Judicial Review; Constitutionalism & Introduction to Constitutional Interpretation

Marbury v. Madison (1803)

Alexander Hamilton (1788): *Federalist No. 78*

Lysander Spooner (1867): *No Treason: The Constitution of No Authority*

WEEK 2

Theories of Jurisprudence:

1. Traditional/Analytical Jurisprudence; The Right Answer Thesis, Textualism; Original Intent
2. Sociological Jurisprudence
3. Legal Realism and neo-Realism
4. Natural Law & Legal Positivism

Siegel (2009): *The Inexorable Radicalization of Textualism*

Thilly (1923): *Sociological Jurisprudence*

Leiter (1999): *Review Essay: Positive, Formalism, Realism*

Law and Morality—Peter Cane (2006): *The Hart Devlin Debate*

Cotterrell (2000): *Common Law Approaches to the Relationship between Law and Morality*

Dworkin (1976): *Dworkin's "Right's Thesis"*

Tushnet (1983): *Critique of Interpretivism and Neutral Principles*

WEEK 3 & 4

Legitimacy & Judicial Activism:

Legitimacy & the Counter-Majoritarian Difficulty—Moeller (1985): *Alexander M. Bickel: Toward a Theory of Politics*

Dred Scott v. Sandford (1857)

Ehrlich (1974): *The Origins of the Dred Scott Case*

Whittington (2001): *Dred Scott, Judicial Authority and Political Questions*

Original Intent: *The Meese Brennan debate* (1985)

Stare Decisis

The Natural Law Debate: Law and Morality; The Black/Frankfurter Debate

Felix Frankfurter (1965): *Memorandum on Incorporation*

Judicial Scrutiny — Multi-tier Analysis:

U.S. v. Carolene Products (1938) Footnote 4

Lewis F. Powell Jr (1982): *"Carolene Products" Revisited*

San Antonio School District v. Rodriguez (1973)

Plyler v. Doe (1982)

Incorporation & Legitimacy:

(The 14th Amendment); The Black/Frankfurter Debate revisited

Adamson v. California (1947)

Gitlow v. New York (1925)

Palko v. Connecticut (1937)

Griswold v. Connecticut (1965)

Richard A. Posner (1990): *Bork and Beethoven*

WEEK 5

Threshold Issues of Jurisdiction & Standing & Legal Realism Revisited:

Denying Certiorari

Frank M. Coffin (1986): *Federalist No 85 on Relations between the Judiciary and Congress*

The Political Question Doctrine: Luther v. Borden (1849)

Rachel Barkow (2002): *More Supreme than Court: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy*

Appellate Jurisdiction: Ex Parte McCordle (1869)

Colegrove v. Green (1946) & Baker v. Carr (1962)

Powell v. McCormack (1969)

Mootness & Ripeness: DeFunis v. Odegaard (1974)

Brandeis Ashwander Rules (1936)

Standing: Massachusetts v. Mellon [& Frothingham v. Mellon] (1923)

Flast v. Cohen (1968)

Valley Forge Christian College v. Americans United (1982)

Lujan v. Defenders of Wildlife (1992)

Congressional Investigations: Watkins v. U.S. (1957) & Barenblatt v. U.S. (1959)

WEEK 6 & 7

Federalism:

Sovereign Immunity & the Eleventh Amendment: Chisolm v. Georgia (1793)

Martin v. Hunter's Lessee (1816)

Cohens v. Virginia (1821)

Implied Powers: McCulloch v. Maryland (1819)

Texas v. White (1869)

Preemption: Pennsylvania v. Nelson (1956) & Chamber of Commerce v. Whiting (2011)

American Insurance Assoc. v. Garamendi (2003)

Traditional State Functions: National League of Cities v. Usery (1976) & Garcia v. San Antonio Metro (1985)

Gregory v. Ashcroft (1991)

Printz v. U.S. (1997)

Reno v. Condon (2000)

Board of Trustees of the University of Alabama v. Garrett (2001)

District of Columbia v. Heller (2008)

Clayton & Pickerill (2004): *The Supreme Court's Federalism Revolution*

Bond v. US (2014)

King v. Burwell (2015)

WEEK 8.1 MIDTERM EXAM

WEEK 8.2 & 9

The Commerce Clause & Federal Police Powers:

Madison's *Essay on Property* (1792)

Gibbons v. Ogden (1824)

Cooley v. Board of Wardens (1851)

Redish & Nugent (1987): *The Dormant Commerce Clause and the Constitutional Balance of Federalism*

U.S. v. E.C. Knight (1895)

Champion v. Ames (1903)

U.S. v. Butler (1936)

Heart of Atlanta Motel v. U.S. (1964)

South-Central Timber Development Inc. v. Wunnicke (1984)

Barry Cushman (2000): *Formalism and Realism in Commerce Clause Jurisprudence*

U.S. v. Lopez (1995)

U.S. v. Morrison (2000)

Gonzales v. Raich (2005)

US v. Comstock (2010)

Barnett (2001): *The Original Meaning of the Commerce Clause*

The Taxing Clause: National Federation of Independent Businesses v. Sebelius (2012)

WEEK 10

Substantive Due Process and Property Rights:

Dartmouth College v. Woodward (1819)

Charles River Bridge v. Warren Bridge (1837)

Slaughter-House Cases (1873)

Munn v. Illinois (1877)

Lochner v. U.S. (1905)

Sunstein (2008): *Due Process Traditionalism*

Hammer v. Dagenhart (1918)

Adkins v. Children's Hospital (1923)

Nebbia v. New York (1934)

West Coast Hotel v. Parrish (1937)

NLRB v. Jones & Laughlin (1939)

U.S. v. Darby (1941)

Wickard v. Filburn (1942)

Williamson v. Lee Optical Company (1954)

Ferguson v. Skrupa (1963)

WEEK 11

Eminent Domain:

Hawaii Housing Authority v. Midkiff (1984)

Nollan v. California Coastal Commission (1987)

Dolan v. City of Tigard (1994)

Kelo v. City of New London (2005)

Dana (2009): *Exclusionary Eminent Domain*

Stop the Beach Renourishment v. Florida Department of Environmental Protection (2010)

WEEK 12

War Powers & Foreign Affairs:

The Prize Cases (1863)

Ex Parte Milligan (1866)

Korematsu v. U.S. (1944)

Youngstown v. Sawyer (1952)

U.S. v. Curtiss-Wright (1936)

Lofgren (1973): *Curtiss-Wright Historical Reassessment*

Haig v. Agee (1981)

Hamdi v. Rumsfeld (2004)

Hamdan v. Rumsfeld (2006)

Boumediene v. Bush (2008)

LEGAL OPINION DUE

WEEK 13

Separation of Powers, Executive Powers, Privilege & Presidential Immunity:

New York Times v. U.S. (1971)

U.S. v. U.S. District Court (1972)

U.S. v. Nixon (1974)

Bowsher v. Synar (1986)

Clinton v. Jones (1997)

Enterprise Fund v. Public Company Accounting Oversight Board (2010)

Rozell (1999): *Executive Privilege*

Zivotofsky v. Kerry (2015)

WEEK 14

Congressional Immunity:

Hutchinson v. Proxmire (1979)

Legislative Veto:

INS v. Chadha (1983)

Legislative Vetoes after Chadha

Line Item Veto:

Clinton v. City of New York (1998)

Foreign Sovereignty

Samantar v. Yousuf (2010)

Conclusion:

Is the Supreme Court the Constitution?

FINAL EXAM – WEEK 15 / FINALS WEEK