

POLSCI 272: AMERICAN CONSTITUTIONAL LAW II

INFO

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Dates: Spring Term 2008
Times: M and W 8:30 – 9:40 AM, F 8:30 – 9:30 AM
Place: Willis 203
Office hours: M and W 3:30 – 5 PM and by appointment

COURSE DESCRIPTION

This course covers the development of constitutional law from Reconstruction to the beginning of the Roberts era. Constitutional Law I is not a prerequisite, but a good background in American history is strongly recommended. We will focus on the development of modern civil liberties doctrine and the emergence of the federal courts as the primary guarantor of civil rights, examining not only constitutional doctrine but also the broader intellectual and political context in which it evolved. Topics will include adoption of the Reconstruction amendments, the struggle over economic regulation and the doctrine substantive due process, FDR's battle with the Supreme Court, and the expansion of civil liberties under the Warren Court.¹

OBJECTIVES

The primary objective of this course is for you to learn **how to think like a constitutional scholar**. This includes the ability to do the following things and do them well:

- Understand the basic arguments within constitutional law doctrine as it evolved from the Civil War until the present.
- Interpret and explain the differences within particular periods of the law's development as well as between periods.
- Organize and judge the strengths and weaknesses of legal arguments especially modes of constitutional interpretation (i.e. textualist, originalist, constructivist, et cetera).
- Research and create a legal case note which describes legal, political, and historical contexts; analyzes Supreme Court opinions; and evaluates contemporary scholarship and significance.

¹ This course closely follows Professor Kimberly K. Smith's course taught at Carleton College during 2005-2006. I acknowledge her influence and assistance.

ACTIVITIES AND ASSIGNMENTS

This is an intensive course. You will need approximately **six to eight hours per week** outside of class in order to fully prepare for class meetings. (Assignments such as the case note will take additional time so plan accordingly.) Depending on your own speed and preferences, you may allot your preparation time to reading, taking notes on the readings, meeting with other students, or preparing for presentations. I strongly encourage you to meet regularly with a study group outside of class. Not only will these study groups significantly help your success in the course, but they also will give you a taste of a real law school curriculum.

Specific activities and assignments are as follows:

1. **Class discussion.** Our discussions in class will form a critical part of your learning. I will use the Socratic method of interrogation in this class. Each of you should prepare for *every* class accordingly. At a minimum you should be able to do the following: summarize the facts of the assigned case(s); explain the Court's reasoning and the holding; explain the reasoning of the dissenting opinions, if any; and critique the Court's decision based both on its internal logic and the historical context.

IMPORTANT Many of our discussions in class will involve sensitive issues such as race, class, gender, and sexuality. It is of the utmost importance that we maintain an environment of respect and openness conducive to everyone's full and honest participation. In this respect, each individual student's success in the course depends on the success of the class as a whole; we cannot expect to discuss these issues thoughtfully and with sophistication unless all students feel that they can contribute to the conversation.

2. **Midterm assignment.** I will distribute a midterm assignment on Friday, April 25. You will prepare possible responses and we will work on this together in class on Monday, April 28. A final version is due on Friday, May 2.
3. **Final group project.** At the beginning of the term, I will put you into groups of four or five that will remain for the rest of the term. The purpose of this is to give you practice for an essential part of law school and legal practice – working together to interpret, synthesize, and present legal materials. As a team you will be responsible for a final presentation. Each group will meet with me prior to the final presentation to develop a successful plan for the class. See the attached document for more details on this assignment.
4. **Case note.** See the attached document detailing this assignment.

REQUIRED TEXTS

The following texts and the coursepack may be purchased at the Carleton Bookstore, or elsewhere as may be your preference.

- Kelly, Harbison, and Belz, *The American Constitution*, Vol. II (7th edition; Norton, 1978) [KHB].
- Keck, *The Most Activist Court Supreme Court in History* (Chicago, 2004) [Keck].

EVALUATION

The following is a list of requirements and means of evaluation. **I will post specific rubrics of how I evaluate participation and writing assignments on Moodle; you should be very familiar with these expectations.**

<i>Task</i>	<i>Due Date</i>	<i>Percentage of grade</i>
1. Participation (class discussion, other kinds of participation, and attendance)	Ongoing	20%
2. Midterm assignment	5/2/08	20%
3. Final group project	6/2/08 or 6/4/08	30%
4. Case note	Final due date: 5/22/08	30%

NOTE: Components of this assignment are due during the course of the semester. You must submit all of these parts in order before earning credit for the final draft

COURSE POLICIES

ATTENDANCE: As said above, our class activities form a vital part of this course. I strongly recommend that you avoid missing class unnecessarily. Each unexcused absence will lower your participation grade by ten percent. Excused absences must be cleared with me in advance of the class you will miss. Unexcused tardiness will count as half an absence.

MISSING AND LATE ASSIGNMENTS: Assignments are due at the specified times. Each day an assignment is late I will deduct ten percent of your grade. Missing assignments will receive no credit.

INTEGRITY: I will report all cheating, plagiarism, and academic misconduct immediately to the College. Please also note Carleton College's policy on Academic Integrity and its Community Standards as detailed at http://apps.carleton.edu/campus/dos/handbook/policies/?policy_id=6131.

SUPPORT: Please make use of the Write Place as well as other Academic Services the College has to offer. See the list of support services at <http://www.carleton.edu/student/support/index.html>.

LAPTOPS: Because of extreme potential for distraction, **no laptops are allowed in class**. If you have medical reasons for needing a laptop, please discuss this with me outside of class.

ASSIGNMENT: CASE NOTE

Your assignment is to research a significant constitutional case and explain its importance to the development of constitutional law, to constitutional politics, and to the development of the Court as a political institution. Your paper should be **no more than 15 pages** (12-pt font, 1 inch margins). Case notes are designed to explain the facts, reasoning, and holding in a case in a concise and simple fashion. They are usually read by legal professionals, but they should be easily understood by an intelligent layperson. They follow a standard format:

I. Introduction: This should be brief and to the point. It should state your thesis.

II. Background: This section will discuss the specific facts of the case as well as any political, social, legal, or cultural contextual factors that you think will help to illuminate the case. It should conclude by telling us how the case got to the Supreme Court and what the major legal issues were.

III. Analysis of the Decision: This section will take us carefully, in a step-by-step analysis, through the reasoning in the Court's opinion and the concurring and dissenting opinions. You may ignore or only touch on the minor or technical issues; focus on the important ones.

IV. Significance: This section should discuss the important impacts of the decision, which may be social, economic, political or legal. Your research should alert you to a range of important consequences; this section should demonstrate your deep engagement with the scholarly literature.

V. Conclusion: A separate conclusion is optional.

You will turn in sections of the case note for me to comment on as indicated on the syllabus. I also strongly recommend that you meet with other students to discuss your research or read drafts. You will then revise these sections and turn in a complete, polished case note on Monday, May 26 (in class).

Documenting sources: I expect you to do a **significant** amount of research on your case. A thoroughly researched paper will rely on many sources, drawing on both books and periodicals. Your bibliography should demonstrate that you have explored the **best** scholarship on the subject (which will typically mean that you should not rely on Internet sources, unless you can make the case that they are reliable and respected). You should cite your sources; the conventions of legal scholarship demand that you carefully document your factual assertions. *PLEASE NOTE:* You should carefully document your sources on **all** drafts that you turn in.

Suggested cases: (You may choose a case not on this list; just clear it with me first.)

- The Slaughterhouse Cases, 83 US 36 (1873) [equal protection]
- The Civil Rights Cases, 109 US 3 (1883) [equal protection]
- Lochner v New York, 198 US 45 (1905) [econ regulation]
- Munn v Illinois, 94 US 113 (1877) [labor]
- Muller v Oregon, 208 US 412 (1908) [labor]
- West Coast Hotel v Parrish, 300 US 379 (1937) [labor]
- Palko v Connecticut, 302 US 219 (1937) [due process]
- West Virginia State Board of Education v Barnette, 319 US 624 (1943) [church & state]
- Mapp v Ohio, 367 US 643 (1961) [rights of accused]
- Griswold v Connecticut, 381 US 479 (1965) [privacy rights]
- Brandenburg v Ohio, 395 US 444 (1969) [free speech]
- US v O'Brien, 391 US 367 (1968) [free speech]
- Miranda v Arizona, 384 US 436 (1966) [rights of accused]
- Roe v Wade, 410 US 113 (1973) [abortion rights]
- Regents of the Univ. of California v Bakke, 438 US 265 (1978) [aff. action]
- Romer v Evans 517 US 620 (1996) [gay rights]
- Lawrence v Texas, 539 US 558 (2003)
- Nollan v California Coastal Commission, 483 US 825 (1987) [takings; environmental regulation]
- McClesky v Kemp, 481 US 279 (1987) [capital punishment]
- Atkins v Virginia, 536 US 304 (2002) [capital punishment]

FINAL GROUP PROJECT: THE ROBERTS COURT

Each group must research and select one important Roberts Court decision that they will present to the class on either Monday 6/2/08 or Wednesday 6/4/08. (I will provide a list of cases from which to choose.) The purpose of this assignment is to integrate all of the cases we have read during the semester into understanding present-day Supreme Court jurisprudence. The assignment consists of two parts.

PART I

After selecting a case, the group must read all the opinions and select the relevant parts for the rest of the class to read (maximum fifteen pages). They must submit this edited version to me and arrange a meeting to discuss how they will present the case. At this meeting the group should also submit an annotated (i.e. with brief descriptions of their facts and relevance) list of cases they will discuss in making their presentation. *This meeting must occur no later than 5/30/08.*

PART II

Each group will prepare a brief presentation that will involve the following items: the facts of the case; prior controlling cases; presenting both sides as they were argued to the Court; and explaining the reasoning of the Court's opinion(s). Preparing this presentation will involve conducting research into the background of the case and reading or rereading relevant precedent. The presentation will be expected to present the case in its legal context with specific references to previous cases as well as suggest the legal significance of the case at hand. Presentations should be no more than ten minutes. Each group will receive a collective grade.

Presentations will be evaluated on the following criteria:

BACKGROUND/LEGAL ISSUES

1. Explain facts of case clearly
2. Cite specific relevant cases
3. Detail specific legal issues/principles at stake

CRITICAL ANALYSIS

1. Explain differences between opinions clearly and specifically
2. Able to present all sides of the issue with equal care
3. Explicate legal precedent

ORGANIZATION/CLARITY

1. State clear purpose at beginning of presentation
2. Present in systematic way (well organized)
3. Use specific examples from text(s)
4. Explain difficult concepts well

INTERACTION

1. Ask relevant questions to gauge students' understanding during course of presentation
2. Involve students effectively in discussion
3. Listen carefully and responded appropriately
4. Find creative ways to stimulate engagement
5. Use hand-outs, Powerpoint, other visuals appropriately

COURSE SCHEDULE

<u>Date</u>	<u>Topic</u>	<u>To be completed before class:</u>
3/31	Introductions, objectives for the course	N/A
4/2	I. The Supreme Court and Individual Rights	Marbury v. Madison Barron v. Baltimore KHB Ch. 17
4/4	Library Assignment: Meet in Libe 306	Library Assignment
4/7	II. Reconstruction and the Nationalization of the Bill of Rights Incorporation Controversy	Douglas' Appendix to <i>Adamson v. California</i> Civil Rights Bill of 1866 Thirteenth, Fourteenth, and Fourteenth Amendment (in KHB) Corfield v. Coryell *TOPIC OF CASE NOTE AND PRELIMINARY BIBLIOGRAPHY DUE (AT LEAST <i>TEN</i> SOURCES)*
4/9	Due Process	Hurtado v. California Palko v. Connecticut Rochin v. California
4/11	III. Race and Citizenship	Slaughterhouse Cases KHB Ch. 18
4/14		Civil Rights Cases
4/16		Plessy v. Ferguson
4/18	IV. The "Lochner Era"	Munn v. Illinois KHB 19, 20 *BACKGROUND SECTION DUE WITH FULL BIBLIOGRAPHY (APPROX. 5 PAGES TOTAL)*
4/21		Lochner v. New York KHB Ch. 23
4/23		Muller v. Oregon
4/25		Adkins v. Childrens Hospital West Coast Hotel v. Parrish Carolene Produces Footnote no. 4 KHB Ch. 24, 25 *MIDTERM ASSIGNMENTS DISTRIBUTED IN CLASS*
4/28	MIDTERM REVIEW	BRING DRAFTS OF MIDTERM ASSIGNMENT

4/30	V. The Warren Court	Brown v. Board of Education KHB Ch. 29
5/2		Heart of Atlanta Motel v. US Katzenbach v. McClung US v. Morrison *MIDTERM ASSIGNMENTS DUE IN CLASS*
5/5	NO CLASS – MIDTERM BREAK	
5/7	The Warren Court and Civil Rights	KHB Ch. 30
5/9		Keck, Chs. 2-3 *REVISED BACKGROUND SECTION, ANALYSIS, AND OUTLINE OF SIGNIFICANCE DUE WITH COMPLETE BIBLIOGRAPHY (APPROX. 12 PAGES TOTAL)*
5/12	VI. The Burger/Rehnquist Era Death Penalty	KHB Ch. 33 Furman v. Georgia
5/14	Right to Privacy	Griswold v. Connecticut Roe v. Wade Planned Parenthood v. Casey
5/16	Gay Rights	Bowers v. Hardwick Lawrence v. Texas Goodridge v. Dept. of Public Health (Mass 2003)
5/19	Religion: Free exercise	Oregon v. Smith Boerne v. Flores
5/21	Equal Protection	US v. Virginia Grutter v. Bollinger *FINAL CASE NOTE DUE THURSDAY 5/22/08 BY 5 PM*
5/23	VII. Evaluating the Burger/Rehnquist Era: Activism or Restraint?	Keck, Ch. 4-5
5/26		Keck, Ch. 6-7
5/28		Keck, Conclusion
5/30	VIII. The Roberts Court	*FINAL GROUP PROJECT DUE* Readings to be distributed

6/2

Readings to be distributed

6/4

Readings to be distributed