

POLITICAL SCIENCE 272
AMERICAN CONSTITUTIONAL LAW II:
RECONSTRUCTION TO THE MODERN ERA
Winter 2012
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This course covers the development of constitutional law from Reconstruction to the contemporary 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.

Texts:

Kelly, Harbison, Belz, Vol. II
Keck, The Most Activist Supreme Court in History

***Additional readings in coursepack [CP]

Course requirements: This course requires a great deal of participation. Each student should be prepared to answer searching questions about the assigned case every day. Students should be able to 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.

Your participation grade will reflect the quality and quantity of your contribution to class discussion.

Because this in-class discussion is a critical part of learning to read and analyze cases, attendance is mandatory.

Absences will substantially lower your grade.

Your grade will be computed as follows:

Moot Court:	15%
Judicial opinion:	5%
Midterm:	20%
Final:	25%
Research Paper:	25%
Participation	10%

Research Paper: Case Note

Your assignment is to research a significant constitutional case and explain why it's important 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. You will then revise these sections and turn in a complete, polished case note on March 9, by 5 pm.

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've 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 it's reliable and respected.) You should cite your sources; the conventions of legal scholarship demand that you carefully document your factual assertions.

The following are recommended cases. You can 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]
Grutter v. Bollinger, 539 U.S. 306 (2003) [aff action]
Romer v Evans 517 US 620 (1996) [gay rights]
Lawrence v Texas, 539 US 558 (2003)
Kelo v City of New London, 545 US 469 (2005) [takings; env'tal regulation]
Atkins v Virginia, 536 US 304 (2002) [capital punishment]
District of Columbia v. Heller, 554 US ____ (2008) [right to bear arms]

Moot Court

Each group will be assigned one case or one issue from a case. The group's task is to research and develop an argument for each side of the case/issue. The presentation will take the form of an oral argument: one student should serve as "lead counsel" for the affirmative side, a second student should serve as "lead counsel" for the negative side. A third student should be prepared to offer a rebuttal for the affirmative side and the fourth student should do the rebuttal for the negative side. The rest of the class will judge the winner and write up individual 2-page "opinions" justifying their decision.

You will receive 10 minutes to present each side, and 5 minute for each rebuttal (30 minutes total). **Be prepared for the judge to interrupt your presentation with questions.**

Cases:

Kennedy v Louisiana

McDonald v Chicago

Fisher v University of Texas

Gill v Office of Personnel Mgt [federal authority]

Gill v Office of Personnel Mgt [equal protection]

Thomas More Law Center v Obama

Writing Opinions

After each debate on the Bill of Rights, you will act as a judge and write a short opinion explaining how you would rule on the question and why. The goal of this exercise is to help you master the art of legal writing and analysis. You should adopt the voice of a judge; your paper should be clear, concise, and polished.

A good judicial opinion states the question briefly, announces the ruling, and then explains the judge's reasoning. The aim is to make the reasoning supporting the conclusion crystal clear. The judge should also carefully and respectfully explain and respond to counterarguments. Legal writing always aims for concision, so your paper should be no longer than 1000 words (about two pages, single-spaced).

You will write opinions for each of the five debates you don't participate in. I will give you feedback on each of them, but I will grade only the last one.

I. Introduction

Class 1: Introduction

Class 2: The Supreme Court and Individual Rights

Marbury v Madison

Barron v Baltimore

KHB Ch. 17

II. Reconstruction & the Nationalization of the Bill of Rights

Class 3: Incorporation controversy

Douglas' Appendix to Adamson v California

Civil Right Bill of 1866

13th, 14th, 15th amendments

Corfield v Coryell

Class 4: Due Process

Hurtado v California

Palko v Connecticut

Rochin v California

*Topic of case note and preliminary bibliography due

III. Race and citizenship

Class 5: Slaughterhouse Cases

KHB Ch. 18

Class 6: Civil Rights Cases

Class 7: Plessy v Ferguson

Class 8: The Color-Blind Constitution?

Anderson, Race-Conscious Educational Policies Versus A Color-Blind Constitution [R]

Turner, The Dangers of Misappropriation: Misusing Martin Luther King, Jr.'s Legacy to Prove the Colorblind Thesis [R]

IV. The "Lochner Era"

Class 9: Munn v Illinois

KHB 19, 20

Class 10: Lochner v New York

Muller v Oregon

KHB Ch. 23

*Background section of case note due, *properly documented*

Class 11: Adkins v Childrens Hospital

West Coast Hotel v Parrish

Carolene Products footnote 4

KHB Ch. 24, 25

Class 12: MIDTERM EXAM

V. The Warren Court

Class 13: Brown v Board of Education
Brown II
KHB Ch. 29

Class 14: Heart of Atlanta Motel v US, Katzenbach v McClung
US v Morrison

BREAK

Class 15: The Warren Court and Civil Rights
KHB Ch. 30

Class 16: Keck chapters 1- 3

*Analysis and revised background sections of case note due, both sections properly documented

VI. The Contemporary (More or Less) Era

Class 17: Death Penalty
KHB Ch. 33
Furman v Georgia

Class 18: Guns
US v Lopez
DC v Heller

Class 19: Moot court: Kennedy v Louisiana; McDonald v Chicago

Class 20: Equal Protection
US v Virginia
Grutter v Bollinger

Class 21: Right to Privacy
Griswold v Connecticut, Roe v Wade,
Casey v Akron

Class 22: Moot Court: Fisher v University of Texas (with special guest?)

Class 23: Gay rights
Bowers v Hardwick, Lawrence v Texas,
Varnum v Brien (Iowa Supreme Court, April 2009)

Class 24: Gill v Office of Personnel Mgt

Class 25: Religion: Free exercise
Oregon v Smith
Boerne v Flores

Class 26: Moot Court: Thomas More Law Center v Obama

Class 27: Keck, Ch. 4, 5

Class 28: Keck, Ch. 6-Conclusion

*Final draft of case note due in my office by 5 pm

Final Exam: self-scheduled