

POLITICAL SCIENCE 272
AMERICAN CONSTITUTIONAL LAW II:
RECONSTRUCTION TO THE MODERN ERA
Winter 2014
Prof. Kimberly Smith
3a
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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 of 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 **in class on March 12**.

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 570 (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 (see below).

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:

Town of Greece v Galloway
McCutcheon v FEC
Schuette v Coalition to Defend Affirmative Action
Floyd et al v New York

Peer evaluation: Please note that your grade for this assignment will rest in part on your group participation. I will be asking everyone to fill out a peer evaluation and self-evaluation form, which will inform my grading. Do not assume that everyone in the group will get the same grade.

Judicial Opinion

You will write two judicial opinions:

- You will write up a formal judicial opinion after one of the first three moot court presentations. I will tell you which case to write up. This first opinion will be ungraded; I will simply give you feedback on it. This opinion will be due in the class session after the presentation.
- Everyone (except the presenting group) must write up a judicial opinion on the final moot court presentation, which will be graded. The presenting group will write up a graded opinion on the penultimate case.

A judicial opinion follows a standard format, often called the "IRAC" format:

Issue: After briefly explaining the facts, state clearly and concisely the legal issue in the case.

Rule: Explain what legal rule or rules apply to this case. (The legal rule is usually a holding in a precedential case.)

Analysis: Explain how the rule applies to the facts of this case

Conclusion: What is your decision on this case?

I expect the opinion to be about 1000 words (two single-space pages).

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**

EXTRA SESSION: Tuesday, Jan. 14, 7:00 pm: Legal Research Workshop (Weitz 138)

This session is mandatory unless you've taken Con Law I

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 [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
Carlene 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

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

BREAK

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: Freedom of speech
KHB 33
Buckley v Valeo
Citizens United v FEC

Class 18: **Moot court:** McCutcheon v FEC

Class 19: Equal Protection
US v Virginia
Grutter v Bollinger

**McCutcheon opinions due*

Class 20: **Moot Court:** Schuette v Coalition to Defend Affirmative Action

Class 21: Terry v Ohio

**Schuette opinions due*

Class 22: **Moot Court:** Floyd et al v New York

Class 23: Right to Privacy
Griswold v Connecticut, Roe v Wade,
Casey v Akron

**Floyd opinions due*

Class 24: Gay rights

Bowers v Hardwick, Lawrence v Texas,
Varnum v Brien, US v Windsor

Class 25: Religion: Free exercise

Oregon v Smith
Boerne v Flores

Class 26: **Moot Court:** Town of Greece v Galloway

Class 27: Keck, Ch. 4, 5

**Galloway opinions due*

Class 28: Keck, Ch. 6-Conclusion

***Final draft of case note due in class today**
***Peer and self-evaluation form due in class**

Final Exam: self-scheduled