POLITICAL SCIENCE 272

AMERICAN CONSTITUTIONAL LAW II:

RECONSTRUCTION TO THE MODERN ERA

Winter 2018

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.

Text:

Kelly, Harbison, Belz, The American Constitution, 7th ed., Vol. II

\*\*\*Additional readings in coursepack [CP] or posted on moodle

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:

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

##### 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.

##### 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.

##### 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.

##### 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 Friday, March 9.

Documenting sources: I expect you to do a significant amount of research on your case. A thoroughly researched paper will rely on at least 12-15 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]

Geer v Connecticut, 161 US 519 (1895) [wildlife protection]

Lochner v New York, 198 US 45 (1905) [econ regulation]

Muller v Oregon, 208 US 412 (1908) [labor]

Missouri v Holland, 251 US 416 (1920) [environmental protection]

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]

Lawrence v Texas, 539 US 558 (2003) [gay rights]

Kelo v City of New London, 545 US 469 (2005) [takings; environmental regulation]

District of Columbia v. Heller, 554 US 570 (2008) [right to bear arms]

Obergefell v Hodges, 576 US \_\_\_ (2015) [gay rights]

**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:

* Gill v. Whitford: whether the district court violated *Vieth v. Jubelirer* when it held that Wisconsin's redistricting plan was an impermissible partisan gerrymander
* Trump v International Refugee Assistance Project: whether  Executive Order No. 13,780, Section 2(c)'s temporary suspension of entry violates the Establishment Clause.
* Masterpiece Cakeshop v Colorado Civil Rights Division I: Whether applying Colorado's public accommodations law to compel the petitioner to create expression that violates his sincerely held religious beliefs about marriage violates the free speech clause of the First Amendment.
* Masterpiece Cakeshop v Colorado Civil Rights Division II: Whether applying Colorado's public accommodations law to compel the petitioner to create expression that violates his sincerely held religious beliefs about marriage violates the free exercise clause of the First Amendment
* Carpenter v. U.S.: Whether the warrantless seizure and search of historical cellphone records revealing the location and movements of a cellphone user over the course of 127 days is permitted by the Fourth Amendment.

**Peer Evaluation:**  
  
Your grade for the group project will be based in part on peer evaluation.  I’ll calculate it thus:

(Project grade \* your peer evaluation score)/100  
  
For example, if your project grade is B (or 3 on a 4-point scale) and your peer evaluation score is 110, your grade is 3 x 1.1= 3.3.   
  
Your peer evaluation score:  Everyone in the group will be given 100 points to distribute among the other group members.  You may not give everyone the same number of points!  You must make some discriminations among them.  I’ll add up the number of points you get, and that will be your peer evaluation score. You will also do a non-binding peer evaluation once during the term, giving each group member some (anonymous!) comments on their performance.

Appeals: You may appeal your peer evaluation to me. I’ll listen to your complaint and ask each group member to explain their reasoning. I’ll affirm reasonable scores and modify scores that don’t seem to be supported by good reasons.

**Judicial Opinion**

You will write two judicial opinions:

* You will write up a formal judicial opinion after one of the first two 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 as indicated on the syllabus.
* Everyone must write up a judicial opinion on one of the final three moot court presentations. You may choose which case to write up. This opinion will be graded.

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).

**Introduction**

Class 1: Introduction

Class 2: The Supreme Court and Individual Rights

Marbury v Madison [CP]

Barron v Baltimore [CP]

KHB Ch. 17

1. **Reconstruction & the Nationalization of the Bill of Rights**

Class 3: Incorporation controversy

Black’s Appendix to Adamson v California [CP]

Civil Right Bill of 1866 [CP]

13th, 14th, 15th amendments [CP]

Corfield v Coryell [CP]

Class 4: Due Process

Hurtado v California [CP]

Palko v Connecticut [CP]

Rochin v California [CP]

# Race and citizenship

Class 5: Slaughterhouse Cases [CP]

KHB Ch. 18

**\*Topic of case note and preliminary bibliography due**

**\*Choose a moot court case by classtime today!**

**EXTRA SESSION: Fri Jan. 12, 7:00-8:00:** Legal Research Workshop (location TBA)

\*\*\*This session is mandatory unless you’ve taken Con Law I\*\*\*

Class 6: Civil Rights Cases [CP]

Class 7: Plessy v Ferguson [CP]

Class 8: The Color-Blind Constitution?

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

Turner, The Dangers of Misappropriation [moodle]

# The “Lochner Era”

Class 9: Munn v Illinois [CP]

KHB 19, 20

Class 10: Lochner v New York [CP]

Muller v Oregon [CP]

KHB Ch. 23

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

Class 11: Adkins v Childrens Hospital [CP]

West Coast Hotel v Parrish [CP]

Carolene Products footnote 4 [CP]

KHB Ch. 24, 25

Class 12: Conservation and the Constitution

**\*\*First (nonbinding) Peer Evaluation due by 5 pm Mon. Jan 29**

# Toward the Modern Court

Class 13: War and Presidential Power

Korematsu v. U.S. [CP]

KHB Ch. 27

\*\*Attend the talk by Eric Muller today at 4:30 pm

Class 14: MIDTERM

**\*\*\*BREAK\*\*\***

Class 15: Brown v Board of Education [CP]

Brown II [CP]

KHB Ch. 29

Class 16: Heart of Atlanta Motel v US, Katzenbach v McClung [CP]

US v Morrison [CP]

# V. Contemporary Conflicts

Class 17: The Warren Court and Civil Rights

KHB Ch. 30

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

Class 18: Privacy I: Reproductive Rights

Griswold v Conn., Roe v. Wade, Casey v. Planned Parenthood [CP]

Class 19: Privacy II: Search and Seizure

Katz v. United States [CP]

Smith v. Maryland [CP]

Class 20: **Moot Court**: Carpenter v. US

Class 21: Redistricting

Reynolds v Sims [CP]

Vieth v. Jubelirer [CP]

*\*Carpenter opinions due in class*

Class 22: **Moot Court**: Gill v. Whitford

Class 23: Religion I: Establishment Clause

Lemon v Kurtzman [CP]

Lynch v Donnelly [CP]

*\*Gill opinions due in class*

Class 24: Religion II: Free exercise

Oregon v Smith [CP]

Boerne v Flores [CP]

Class 25: Gay rights

Bowers v Hardwick, Lawrence v Texas [CP]

Obergefell v Hodges [CP]

Class 26: **Moot Court:** Masterpiece Cakeshop v. Colorado Civil Rights Division I & II

Class 27: **Moot Court:** Trump v. International Refugees Assistance

\**Masterpiece I & II Opinions due in class*

Class 28: Conclusion and Review

*\*Trump opinions due in class*

**\*Final draft of case note due in class today**

**\*Peer evaluation due by 5 pm Friday Mar. 9**

**Final Exam: self-scheduled**