

Constitutional Law

Spring Term 2011

Law 220.6 sec. 2

Prof. Bertrall Ross

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Office hours: Thursdays – 10-11 a.m. (drop-in); 2:30-4:00 p.m. (by appointment)

Syllabus

Class Meeting: Monday, Tuesday, and Wednesday from 3:35 to 4:45 p.m. in Room 105

Required Text:

MICHAEL STOKES PAULSEN, STEVEN G. CALABRESI, MICHAEL W. MCCONNELL, SAMUEL L. BRAY,
THE CONSTITUTION OF THE UNITED STATES

Supplemental Texts:

You may find helpful as supplements one or more of the following:

1. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (2006) (a comprehensive and very useful hornbook)
2. LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW (1999) (very detailed treatise that does not cover Equal Protection or Substantive Due Process)
3. CHRISTOPHER N. MAY AND ALLAN IDES, EXAMPLES & EXPLANATIONS: CONSTITUTIONAL LAW: NATIONAL POWER & FEDERALISM (5th ed. 2009)
4. CHRISTOPHER N. MAY AND ALLAN IDES, EXAMPLES & EXPLANATIONS: CONSTITUTIONAL LAW: INDIVIDUAL RIGHTS (5th ed. 2009)

Classroom Expectations:

The purpose of classroom discussion is to develop analytical and oral argument skills. It will also be important to develop the ability to listen carefully and to respond to the arguments of others. To encourage the development of these skills, every student subject to being on call will be expected to have read the assignment and to participate on the basis of these readings. In addition, students will be asked to respond to the claims and arguments of others and occasionally to provide counter-arguments even when it is not an argument that you necessarily support.

Classroom “On-Call” System: The “Chosen Few”

The on-call system for the class is called the “Chosen Few.” In each class, half of the students will be eligible to be selected as one of the “Chosen Few” through a random draw; the students whose names are randomly drawn will be posted on a power-point slide at the beginning of each class. Those special few (approximately 5-7 students per class) will be on call and will be graded on their participation. If you are one of the chosen few, attend the class, and are able to respond to questions on the basis of the reading, you will receive full credit. If you are not there or are unable to respond to questions on the basis of the reading, you will receive no credit. Students will not be penalized for having a “wrong” answer; the focus instead will be on the reasoning that you articulate for the answer you give.

“Pass” System

I get that “life happens” and not every student subject to being on call will be prepared everyday. Therefore, each student will have the opportunity to take a “pass” three times during the semester. A pass requires an email to me by noon on the day of class that you are eligible to be one of the chosen few and no explanation for the pass is required or expected.

Other Classroom Rules:

1. Recording Class is prohibited without advance approval.
2. Laptop computers and similar devices may be used in class but not for Internet surfing, text messaging, or comparably distracting extracurricular activities.

Course Objectives:

1. To familiarize you with the fundamental premises and design of the constitutional system and government of the United States.
2. To expose you to the guiding principles and applicable doctrines of select subfields of constitutional law.
3. To cultivate your ability to identify latent constitutional issues.
4. To equip you with the intellectual tools necessary to properly conceptualize and analyze constitutional issues.
5. To foster an informed perspective on the nature and limits of constitutional judicial decision-making.

Exam Objectives:

Students who will perform well on the exam will be able to:

1. Identify constitutional issues that might arise from a given fact pattern
2. Apply doctrine or rules to each issue
3. Make an argument that is not conclusory (every argument should be based on reason(s) and not simply consist of a claim without support)
4. Identify and consider counter-argument(s)
5. Explain why the argument is still valid in light of the counter-argument(s)

Grading:

Grades will be based on a combination of class participation (20%) and a take-home open book exam (80%). The class participation grade will be determined by attendance and prepared responsiveness to on-call questions. To assist in the preparation for the final exam, students will have the opportunity late in the semester to take an optional ungraded practice final exam that we will go over in the review session.

Assignments:

All assignments are subject to change.

Part I: Introduction to the Constitution of the United States

Intro Class: The Articles of Confederation, pages xvi-xxii; U.S. Constitution (Art. I-VII, Amendments I-X), pages 1-10

1. The Formation of the Constitution of the United States, 18-37
2. The Nature of the Constitution:
 - a. Purposes, Features, and Themes, 37-52
 - b. The Addition of the Bill of Rights, re-read pages 9-10, 52-27
3. Early Controversies Under the Constitution: The First Bank of the United States; Slavery – *Split on-call day*
 - a. The First Bank of the United States, 66-83
 - b. Slavery, 83-99
4. Early Controversies Under the Constitution: The Neutrality Controversy and the Correspondence of the Justices, 99-114
5. Early Controversies: The Alien and Sedition Act Controversies; Judicial Enforcement of the Sedition Act, 114-139

Part II: The Power of Constitutional Interpretation

6. Constitutional Supremacy and the Power of Interpretation, 140-164
7. Judicial Review (*Marbury v. Madison*), 164-182
8. Judicial Supremacy (*Ex Parte Merryman*), 182-195
9. Judicial Interpretive Methods
 - a. *United States v. Barron*, 57-66
 - b. *District of Columbia v. Heller*, 1221-1235

Part III: Separation of Powers

10. Introduction to Separation of Powers; Article I: The Legislative Power (*Youngstown Sheet & Tube Co. v. Sawyer*), 197-219
11. Article I, Section 1: The Principles of Enumeration and National Supremacy (*McCulloch v. Maryland*), 219-238
12. Article I, Section 7: Bicameralism and Presentment (*INS v. Chadha*; *Clinton v. New York*), 301-322
13. Article I, Section 9-10: Bill of Attainder and Ex Post Facto Clauses (*United States v. Brown*; *Calder v. Bull*), 322-346
14. Introduction to the Executive Power (*In re Neagle*), 346-372
15. Executive Power and Foreign Affairs (*United States v. Curtiss-Wright Export Corporation*; *Dames & Moore v. Regan*; *Goldwater v. Carter*; *Missouri v. Holland*), 479-505
16. The War Power (*The Prize Cases*; *Dellums v. Bush*), 505-530
17. Military Commissions and Emergency Powers (*Korematsu v. United States*; *Ex parte Quirin*; *Boumediene v. Bush*), 530-564

Part IV: Federalism

18. Introduction to American Federalism; National Powers in Article I, Section 8 (*United States v. Lopez*), 680-711
19. Commerce Clause I (*Hammer v. Dagenhart*, *Wickard v. Filburn*; *United States v. Morrison*), 711-737

20. Commerce Clause II (*Rancho Viejo, LLC v. Norton; Gonzales v. Raich*), 737-761
21. Tenth Amendment Constraints on Congress's Power (*New York v. United States; Printz v. United States*), 810-841
22. Article IV Federalism: The Relationship of States to Each Other and to the Nation as a Whole (*Somerset's Case; Lemmon v. The People*), 841-857
23. The Fugitive Slave and Fugitive Extradition Clauses (*Prigg v. Pennsylvania*), 857-867
24. The Territories Clause, the New States Admission Clause, and Citizenship (*Dred Scott v. Sandford*), 867-898
25. The Guarantee Clause: Secession and Reconstruction (*Texas v. White*), 898-913
26. The Constitutional Amendment Process: Article V of the Constitution, 914-925

Part V: The Reconstruction Amendments

27. History, Origins, Structure, Early Interpretation, Enforcement (*The Slaughter-House Cases*), 1326-1353
28. What is the Original Meaning of "Equal Protection of the Laws"? (*Bradwell v. Illinois; Minor v. Happersett; Strauder v. West Virginia*), 1353-1368
29. The Civil Rights Cases and Congress's Power to Enforce the Reconstruction Amendments (*The Civil Rights Cases; United States v Morrison; City of Boerne v. Flores*), 1368-1399
30. The Equal Protection Clause: The Segregation Cases (*Railroad Company v. Brown; Plessy v. Ferguson; Cumming v. Board of Education; Giles v. Harris, Berea College v. Kentucky*), 1399-1420
31. The Desegregation Cases (*Brown v. Board of Education; Bolling v. Sharpe; Brown v. Board of Education II; Browder v. Gayle; Loving v. Virginia*), 1420-1444
32. Discriminatory Intent Versus Disparate Impact; Affirmative Action I (*Washington v. Davis; Grutter v. Bollinger*), 1444-1473
33. Affirmative Action II (*Parents Involved in Community Schools v. Seattle School District*, (551 U.S. 701)) – Excerpts available on bSpace
34. Sex Discrimination (*Craig v. Boren; United States v. Virginia*), 1473-1492

35. Other Classifications Under the Equal Protection Clause (*Buck v. Bell*; *Romer v. Evans*), 1492-1512
36. Substantive Due Process (*Lochner v. New York*; *Nebbia v. New York*; *Meyer v. Nebraska*; *Pierce v. Society of Sisters*), 1512-1534
37. Substantive Due Process Revived (*Griswold v. Connecticut*; *Eisenstadt v. Baird*), 1534-1552
38. Abortion I (*Roe v. Wade*), 1552-1370
39. Abortion II (*Planned Parenthood v. Casey*), 1570-1601
40. Substantive Due Process and Gay Rights (*Bowers v. Hardwick*; *Lawrence v. Texas*), 1627-1649