

# Constitutional Law I

PS 3370/Fall 2009

Dr. Amanda DiPaolo/250 Peck Hall

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Office Hours: MW 2:05-3:30 p.m.

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F 11:15 a.m – 2:15 p.m.

Also by appointment

This course examines the basic principles of American government articulated in the first 150 years of Supreme Court decision-making. Specific attention is devoted to different theories of federalism and economic regulation in the Court's early jurisprudence. This course has two central objectives. The first objective is to furnish students with a basic understanding of judicial power. Reading cases from the Nineteenth and early Twentieth centuries, students will learn how the Court helped shape the framework in which American politics has developed. The second objective of the course is to provide students with some critical distance from the Court's actions. The exercise of judicial power raises questions of political accountability and democratic legitimacy. Throughout the course, we shall consider the consequences of living in a republic where political issues are judicialized and the judiciary is politicized.

## Course Readings

▪ Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints*

## Course Requirements

*Moot Courts (60%).* There will be three moot court exercises, each worth 20% of the course grade. Moot court sessions will be held on **September 28 & 30** (first moot court exercise), **November 2 & November 4** (second moot court exercise) and **November 30 & December 2** (third moot court exercise). On the scheduled days, moot court sessions will take place during the time when lecture ordinarily is held. Each moot court session will feature three teams: (i) lawyers questioning the constitutionality of a statute, (ii) lawyers defending this statute, and (iii) Supreme Court Justices presiding over the dispute. The grade for each moot court will be determined by oral participation (25%) and by a 5-6 page essay (75%).

*Term Paper (20%).* Students are required to pick a case that is in front of the Supreme Court this term. The case **must** be related to federalism / the separation of powers between the branches of the federal government ( e.g. war powers) or between the federal and state governments ( e.g.

commerce issues). The paper should give the facts of the case, explain the legal issue in front of the Court, and then write how they would decide the case using real cases as precedent. You can also use cases that we have not read but that you find to be applicable on your own. Term papers are to be submitted in class, the last day of classes, December 9<sup>th</sup>, 2009.

See a list of cases here:

<http://www.supremecourtus.gov/orders/09grantednotedlist.html>

*Final Test (20%).* Students are required to write the equivalent of a final exam which shall take place on December 9<sup>th</sup>. The exam will consist of short answer questions and will encompass all material from the semester.

I use the plus/minus scale. Grades divisions are thus: 90-100=A; 87-89=B+; 83-86=B; 80-82=B-; 77-79=C+; 73-76=C; 70-72=C-; 67-69 D+; 63-66=D; 60-62=D-; below 60, F

### **Do you have a lottery scholarship?**

To retain Tennessee Education Lottery Scholarship eligibility, you must earn a cumulative TELS GPA of 2.75 after 24 and 48 attempted hours and a **cumulative** TELS GPA of 3.0 thereafter. You may qualify with a 2.75 **cumulative** GPA after 72 attempted hours (and subsequent semesters), if you are enrolled full-time and maintain a **semester** GPA of at least 3.0. A grade of C, D, F, or I in this class may negatively impact TELS eligibility. Dropping a class after 14 days may also impact eligibility; if you withdraw from this class and it results in an enrollment status of less than full time, you may lose eligibility for your lottery scholarship. Lottery recipients are eligible to receive the scholarship for a maximum of five years from the date of initial enrollment, or until a bachelor degree is earned. For additional Lottery rules, please refer to your Lottery Statement of Understanding form, review lottery requirements on the web at <http://scholarships.web.mtsu.edu/telsconteligibility.htm>, or contact the Financial Aid Office at 898-2830.

### **Students with Disabilities**

If you have a disability that may require assistance or accommodation, or you have questions related to any accommodations for testing, note takers, readers, etc., please speak with me as soon as possible. You may also contact the Office of Disabled Student Services (898-2783) with questions about such services.

### **Plagiarism**

While it should go without being said, plagiarism will not be tolerated in any form in this class. If you have a question about whether something constitutes plagiarism, please see me before handing in an assignment. Violations will result, in the least, in **failure of the course** and possible expulsion from the university.

## **Class Schedule**

*(subject to change at my discretion)*

### **I. The Constitution, the Court, and the Power of Judicial Review**

8/31 Introduction and Course Overview

Judiciary set up

What happens when a policy question becomes a constitutional issue?

9/2 The controversy of judicial review

Hamilton – Federalist #76

Chapter 1 pp. 25-47

9/9 How did the Court obtain the power of judicial review?

Marbury v. Madison (68)

Martin v. Hunter’s Lessee (79)

9/14 Interpreting the Constitution

McCulloch v. Maryland (155)

Bush v. Gore (195)

**First Moot Court Assignment Handed Out**

### **II. Early Interpretations of the Commerce Clause**

9/16 The Marshall Court on commerce

Fletcher v. Peck (570)

Gibbons v. Ogden (426)

9/21 The Taney Court on commerce

Charles River Bridge v. Warren Bridge (581)

Mayor of New York City v. Miln (D2L)

Cooley v. Board of Wardens (492)

9/23 Fugitives and federalism

Prigg v. Pennsylvania (D2L)

Dred Scott v. Sandford (354)

**First Moot Court Essay Due in class**

**First moot court**

**September 28 & 30**

### **III. The Constitution after the Civil War**

10/5 The promise of racial equality

Strauder v. West Virginia (D2L)

Plessy v. Ferguson (D2L)

10/7 Early views of the 14th Amendment

The Civil Rights Cases (D2L)

The Slaughter House Cases (605)

**Second Moot Court Assignment Handed out**

#### **IV. Commerce after the 14<sup>th</sup> Amendment**

10/12 The public interest and class legislation

Munn v. Illinois (611)

Lochner v. New York (620)

10/14 The Role of Women

Minor v. Happersett (D2L)

Bradwell v. United States (D2L)

Muller v. Oregon (626)

Adkins v. Children's Hospital (632)

10/21 The flow of interstate commerce

United States v. E.C. Knight Co. (432)

Champion v. Ames (483)

Hammer v. Dagenhart (360)

#### **V. The New Deal and the Decline of Economic Intervention**

10/26 New cracks in old foundations

Nebbia v. New York (636)

Home Building & Loan Association v. Blaisdell (589).

Schechter Poultry Corp. et. al. v. United States (443)

Williamson v. Lee Optical (644)

10/28 The Crisis of 1937

West Coast Hotel v. Parrish (640)

United States v. Darby (D2L)

Wickard v. Filburn (461)

**Second Moot Court Essay due in lecture**

**Second Moot Court November 2 & 4**

#### **VI. Contemporary Federalism: Living or Dead?**

11/9 Defining the scope of national powers I

South Carolina v. Katzenbach (185)

Katzenbach v. Morgan (D2L)

Oregon v. Mitchell (D2L)

11/11 Defining the scope of national powers II

United States v. Lopez (465)

City of Boerne v. Flores (D2L)

National League of Cities v. Usery (367)

11/16 Defining the scope of national powers III

Garcia v. San Antonio Metropolitan Transit Authority (374)

Gregory v. Ashcroft (D2L)

New York v. United States (379)

Printz v. United States (383)

## **VII. Limits of Judicial Power: Presidential Authority and the Separation of Powers**

11/18 President vs. the Supreme Court I (How Expansive is the Power of the Executive?)

Prize Cases (289)

United States v. Curtiss-Wright Export Corp (179; 264)

Youngstown Sheet & Tube v. Sawyer (311)

11/23 President vs. the Supreme Court II (President limiting individual rights pre-9/11)

Ex parte Milligan (294)

Ex parte Quirin (301)

Korematsu v. United States (307)

11/25 President vs. the Supreme Court III (war on terrorism)

Hamdi v. Rumsfeld (internet)

Hamdan v. Rumsfeld (329)

Rasul v. Bush (internet)

Boumediene v. Bush (internet)

**Third moot court paper due in class**

**Third Moot Court November 30 and December 2**

12/7 Catch up day.

12/9 FINAL TEST!

**Term Paper due in class**