

POLITICAL SCIENCE 315

CONSTITUTIONAL LAW

Dr. Thornberry
Chambers 2027

Fall, 2005
Ext. 2282

REQUIRED TEXT

Ducat (8th edition)-- Constitutional Interpretation: Part I
Jack Rakove – Original Meanings

COURSE PROCEDURE

This course focuses on the United States Constitution as interpreted by the Supreme Court of the United States. Most of the things we will read this term are cases in which the Court has applied language of the Constitution to specific fact situations in order to decide important issues of the structure and function of American government. We will not cover the amendments or issues of civil liberties; that material is included in Political Science 316.

The list of daily reading assignments is given on page 5 of the syllabus. You should bring the text to class with you. You are expected to have done the reading for the day before coming to class.

PAPERS

During the course of the term you will write three papers based on a hypothetical situation which I will hand out a week in advance. You are to pick one particular Justice from the Court and write the paper as if you were a clerk for that Justice. There is material available in the library and on the internet to help you understand how the Justices differ and to give you some clues as to which Justice you would like to select.

In the papers you are to take the point of view which your Justice would be likely to express. Papers are to be in two sections; the first will be the actual opinion and the second will be a section in which you justify why your particular Justice would have written the opinion the way you did. We will select Justices the beginning of the second week of class. An ordinary paper should run at least 8 to 10 pages. No additional outside reading is to be done; all the material necessary should come from the assignments given. Cases cited in Part I should use standard legal citation format. All material in Part II of the opinion should be documented using standard MLA format. A works cited page is mandatory.

Papers are due at the beginning of the court session in which the hypothetical is debated. They should have a cover page giving your name and the name of the Justice you represent. Fancy covers are not necessary but something to hold the pages together is a must. I will divide you into three groups on these days. You will come only to the group of which you are a part. Because the class will have discussed the material in Court sessions, any paper which is handed in after that discussion will be severely penalized. One point **per hour** will be deducted with a maximum of 10 points per day. No papers will be accepted after the third day.

QUIZZES

As an incentive to stay current with the material, I am going to give a short, "open-notes" quiz every Thursday. Make-up quizzes will be provided only in unusual circumstances. If you know in advance that you are going to be away **on college related business**, I will try to have the quiz ready so that you can take it a day in advance. At the end of the semester, I will use only the 10 highest scores for your quiz points.

GRADING

There will be a mid-term review (15%) and a final (30%) in addition to the three court sessions which count 15% each. [The paper for the court sessions are worth 10% each while your participation in the conference is worth 5%.] A final 10% of the total grade will come from the short weekly quizzes.

The Davidson honor system applies to all written work. Please feel free to discuss with me any questions you have about citations. These should be kept to a minimum and use standard legal format--83 U.S. 130 (1873). Footnotes should be MLA style. Only textual addenda should be in notes at the bottom of the page.

Exams will be based on legal hypotheticals. That is, I will describe some legal situation and you will respond as you think the Court would to such facts. The situations will be more complex and cover a wider range of topics than those for the class sessions of the Court. In order to avoid compulsive memorization of names, I will supply you with lists of the cases we cover both before and with the tests.

Note that Davidson academic regulations call for failing grades to be given to any student who misses more than 25% of the scheduled classes.

MATTERS OF STYLE

In writing papers, you are expected to follow all rules of standard English and to produce a product of which literate Justices would be proud. Buy a dictionary and use it. Avoid slang, contractions, indefinite antecedents, starting sentences with conjunctions, ending them with prepositions, using split infinitives, relying on "et. cetera," and the thousand other sins of which Freshman English tried to cure you.

OFFICE HOURS

My office is in Chambers 2027, and my office telephone is 704-894-2282. You may also call me at home (704-892-5055) during what Miss Manners refers to as civilized hours [9:00 a.m. to 9:00 p.m.]. Tentative office hours: MWF 10:00-11:30; TR 9:30-10:00.

GUIDELINES FOR BRIEFING CASES

What follows is a suggested list of material you should extract from the cases we read. Just how you do so is up to you. Some people find marking in the margins of the text sufficient. Others use 3x5 cards or buy a special notebook. I do not care what you do as long as it works for you. Do not merely read the cases, however, and plan to come back and "learn" them for a test. Keep up!

Who: parties. Not all names are relevant but they may help you to keep clear the individuals involved and to remember the case.

Facts: some idea of the general problem that lead to the case coming to the courts.

Legal issue: law, section of the Constitution.

Holding: ruling of the Court. Note that it must be in generalizable form. It is not the same thing as the decision, which applies only to the case at hand.

Reasoning: major points raised by the Justices. Note concurring and dissenting opinions as well.

Pattern: how does the case fit with earlier ones. Are previous precedents cited, overturned, expanded?

THE INTERNET

The internet has become an increasingly important source for tracking opinions of both state and federal courts. The best site for the Supreme Court is <http://supct.law.cornell.edu/supct>. It is also a good starting point to find material on the various Justices. Scroll down the page and on the left you will find a link to a gallery of current Justices.

JUSTICES

William Rehnquist -- 1972/1986, Nixon/Reagan; state's rights conservative, now The Chief

John Paul Stevens -- 1975, Ford; unpredictable and very interesting, thoughtful; will often write separately; seen as a liberal only by comparison with the rest of the Court

Sandra Day O'Connor -- 1981, Reagan; originally a conservative except on women's rights, now staking out a position in the center with Kennedy and Souter. We will keep her on the Court, since her successor will have no track record at this point.

Antonin Scalia — 1986, Reagan; conservative and increasingly the leader of the right wing; considered one of the more brilliant intellects on the Court; often abrasive and outspoken

Anthony Kennedy -- 1987, Reagan; conservative at outset but joining with O'Connor and Souter to form a centrist group on many issues; precedent oriented

David Souter — 1990, Bush; an unknown when he arrived, he is slowly identifying a position on the center of the Court

Clarence Thomas -- 1991, Bush; conservative; Scalia clone except for brilliance; recent fascination with legal and constitutional history

Ruth Bader-Ginsburg -- 1993, Clinton; Moderate, women's rights advocate

Stephen Breyer -- 1994, Clinton, somewhat more liberal than Ginsburg but very cautious

We will follow the confirmation for O'Connor's replacement. At this time, I am not going to add a new Justice to the Court until the Senate acts.

ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Full accommodations are the legal right of students with all kinds of disabilities, whether learning disabilities or physical disabilities. I am happy to provide these accommodations. If you are a student with a learning disability documented by Davidson College, who might need accommodations, please identify yourself to me within the first week of class, so that I can learn from you as early as possible how to best work with your learning style. Students with other disabilities are also encouraged to self-identify if there is any way in which I can make accommodations that will enhance your learning experience. All such discussions will be fully confidential unless you stipulate otherwise.

**DAILY ASSIGNMENTS
CASE LIST**

Marbury v. Madison	*Hamdi v. Rumsfeld (II + III)
Eakin v. Raub	U.S. v. Nixon
Martin v. Hunter's Lessee	*Cheney v. U. S. District Court
_Ex Parte McCardle	In re Sealed Case (Espy)
Muskrat v. U.S.	_Nixon v. Fitzgerald
Allen v. Wright	Clinton v. Jones
City of L.A. v. Lyons	U.S. v. Belmont
*Friends of Earth v. Laidlaw	Dames and Moore v. Regan
_Flast v. Cohen	U.S. v. Curtiss-Wright Export Co.
Baker v. Carr	Crosby v. Nat. Foreign Trade Council
Bush v. Gore	_Dellums v. Bush
Goldwater v. Carter	MID TERM REVIEW
Schlesinger v. Reservists Committee	Gibbons v. Ogden
_*Vieth v. Jubelirer	Stafford v. Wallace
McCulloch v. Maryland	Houston E/W RR v. United States
South Carolina v. Katzenbach	Champion v. Ames
Katzenbach v. Morgan	Brooks v. U. S.
City of Boerne v. Flores	Heart of Atlanta Motel v. United States
*Tennessee v. Lane (II)	_Katzenbach v. McClung
_Missouri v. Holland	Daniel v. Paul
J. W. Hampton v. U. S.	United States v. E.C. Knight
Panama Refining v. Ryan	Hammer v. Dagenhart
Schechter Poultry v. U.S.	Carter v. Carter Coal
INS v. Chadha	National Labor Relations Board v. Jones and
Bowsher v. Synar	Laughlin Steel
Mistretta v. U. S.	United States v. Darby
_Clinton v. City of New York	_Wickard v. Filburn
Watkins v. U. S.	U. S. v. Lopez
Barenblatt v. U.S.	U. S. v. Morrison
Gibson v. Florida Leg. Comm.	*Nevada v. Hibbs
U.S. v North	Alden v. Maine
Gravel v. U.S.	Printz v. U. S. (p 382)
Doe v. McMillan	*Fed Maritime v. SC. Port Authority
_Hutchinson v. Proxmire	_*Gonzales v. Raich
COURT #1	McCray v. United States
Myers. V. U. S.	Bailey v. Drexel Furniture
Humphrey's Executor v. U. S.	US v. Butler
Morrison v. Olson	Steward Machine Co. v. Davis
Ex Parte Milligan	_South Dakota v. Dole
_Korematsu v. U.S.	COURT #2
Youngstown Sheet and Tube v. Sawyer	Jacobson v. Massachusetts

Pacific Gas & Electric Co. v. State Energy
 Resources Commission
 New York v. U.S
 Reno v. California
 _Edwards v. California
 Cooley v. Board of Wardens
 South Carolina v. Barnwell
 Kassel v. Consolidated Freightways
 _Philadelphia v. New Jersey
 Fletcher v. Peck
 Trustees of Dartmouth College v.
 Woodward
 Charles River Bridge v. Warren Bridge
 _Home Bldg + Loan Assn v. Blaisdell
 Butchers' Benevolent Assn. v. Crescent City
 Livestock (Slaughterhouse Cases)
 Munn v. Illinois
 Lochner v. New York
 Muller v. Oregon
 West Coast Hotel v. Parrish
 City of New Orleans v. Dukes
 _Minn. v. Clover Leaf Creamery
 Penn Central v. New York
 Lucas v. S. Carolina Coastal Council
 Tahoe-Sierra Preservation v. Regional
 Planning Agency
 Dolan v. Tigard
 _*Kelo v. City of New London
COURT #3
 Cooper v. Aaron (358 US 1, 1958)
 West Va. Board of Education v. Barnette
 (319 US 624, 1943)

These final two cases can also be found on
 several web sites.

Aug. 23 – The Constitution: Appendix D +
 E, pp 27-38

25 – I A

30 – I B

Sept. 1 – I B continued

6 – III A

8 – III B

13 – III C

15 – Court # 1

20 – IV A + B (through Korematsu)

22 – IV B

27 – IV D

29 – Mid-term

Oct. 4 – V intro and A

6 – V B

11—Fall Break

13 – V C

18 –V D

20 – Court # 2

25 – VI

27 – VI continued

Nov 1 – VII A

3 – VIIB

8 – VII C

10 – II + Cooper, West Virginia Board

15 – Court #3

17– Rakove 1-4

22 – Rakove 6-7

24 -- Thanksgiving

29 – Rakove 8 - 9

Dec. 1 – Rakove 11

6– Evaluations, conclusions

8 – Reading day

STYLE SHEET

1. Commit yourself to a specific stance. Frame and answer useful and interesting questions. Be controversial; don't be wishy-washy. Prove a point. You need to show that there may be other points of view, but you should show that your ideas are worth consideration. Never forget that you are arguing a case, and that the opposition will have other points. It may be well to try to anticipate and rebut their stands.

2. Develop your thoughts. Not only the whole opinion, but also each paragraph should have a beginning, a middle, and an end.

3. Use specific examples. Quote directly from sources where appropriate and useful. Cite precedent by US Reports numbers.

4. Be selective. Don't tell me everything you know. Use illustrations as an example of a larger point. Never waste time merely summarizing situations. On this point you are exempt from the usual opinion, which often begins with a detailed summary of the fact situation.

5. In the first part of the paper, you should try to copy the style of your Justice. The first person (often plural) appears frequently in their opinions. In the second part, write about your Justice.

6. Use action verbs. Choose distinct nouns. Avoid "this" when the reference is vague.

7. Pay attention to spelling, punctuation, and grammar. [Examples include: Avoid split infinitives. Do not begin sentences with conjunctions except on rare occasions. Do not end sentences with prepositions.]

8. Use gender-inclusive language.

9. Document properly and concisely.

10. Watch transitions. Try reading your work out loud to a sympathetic friend. Can someone who hears your thoughts make sense of them?

11. Be sure to leave enough time for revising, editing, and proofreading your papers. You ought to have 24 hours between each draft. Two drafts are a minimum.

MOST IMPORTANT RULE OF ALL

12. BE INTERESTING! Writing is hard work, but the results should be fun.