

Law 200: Law and Society

Syllabus: Spring 2018

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Class Meetings: Lecture, Mondays and Wednesdays, 2:00-3:20pm, in Law 3; Discussion, once per week (except week 1), choose either Monday, 1:00-1:50pm, in Law 3, or Monday, 4:00-4:50pm, in Law 7.

Office Hours: Mondays 3:45 – 6:00, Room 412, **by advance appointment**; reserve via Emily Cronin.

THE BASICS:

Course Description: We will approach law and society by diving into the debate over the living Constitution. Does the Constitution empower the courts to protect individual liberty against the views of the majority? How do Supreme Court justices interpret the scope of their authority to address the competing demands of the individual and social majorities? Why do individual Justices disagree so vehemently with each other over their proper role? How do the decisions of the U.S. Supreme Court affect our lives, as individuals and as a society? Can we, as individuals or as a society, have an impact upon judicial decisions and help shape the meaning of the Constitution? We will consider such questions by reading – and learning how to read – key Supreme Court decisions. We will consider the social context in which those cases arose, the stories of the individuals who became a part of our constitutional history, and the resonance their stories have in our own time. We will focus, in particular, on the Constitution’s guarantees, through the Fourteenth Amendment, that the government will neither “deprive any person of life, liberty, or property without due process of law,” nor deny to any person “the equal protection of the laws.” Through careful consideration of these critical constitutional commands, we will evaluate the importance of the Constitution for our own lives.

Course Requirements and Evaluation:

1. Attend all lectures and also attend one discussion per week.
2. Complete the reading prior to class, and contribute to class discussion.
3. Complete both the midterm (February 21) and the final examination (May 7).
4. Complete a 3 – 5 page analytical paper (750 minimum - 1,200 words maximum). A proposal identifying your topic is due Wednesday, March 21. Your paper is due Monday, April 16. Late papers receive 10% deduction for each 24-hour period past due.
5. Evaluation: Letter grades will reflect participation (attendance at lecture and discussion; classroom contributions; adherence to laptop and cellphone rules; improvement) (15 percent); midterm (25 percent); paper (30 percent); final (30 percent).
6. **LAPTOPS** are **not** permitted in class, unless you obtain permission in writing from the instructor.
7. **CELLPHONES** must be put away during class, except when expressly permitted by the instructor.

*Required Reading:

1. Course Reader Vol. I (cases) and Vol. II (articles, briefs, and other materials):
*** NOTE: Required Reading Is Noted on the Schedule Below with An Asterisk *.**
All Required Reading Should Be Completed Before The Date Shown.

Recommended Reading:

1. D. Cole, Engines of Liberty: The Power of Social Activists to Make Constitutional Law (2016);
2. L. Greenhouse, The United States Supreme Court: A Very Short Introduction (2012).

SCHEDULE AND COURSE OVERVIEW:

Note – changes to the schedule during the semester, if any, will be posted on Blackboard and announced in class.

Week 1: Introduction, Foundation, and Tools

Jan. 8 Goals and expectations

Jan 10: The Majestic Generality of the U.S. Constitution and the Judicial Challenge

*J. Locke, Second Treatise on Government, paras. 95-99 (1689);

*The Federalist Papers, No. 78 (Hamilton) (1788);

*The Constitution of the United States, Article I, Sections 8, 9; Article II, Section 1 Cl. 5; Article III, Section 1 and Section 2 cl. 2; Article V; Amendments I, IV, IX, XIV Section 1, XIX, XXV.

Recommended reading:

L. Greenhouse, The United States Supreme Court: A Very Short Introduction, pp. 1-12.

Week 2: The Constitution: Dead or Alive?

Jan. 15 Martin Luther King Jr. Holiday – no class

Jan. 17: Constitutional interpretation: Justice Brennan versus Justice Scalia

*W.J. Brennan, Jr., Speech On Constitutional Interpretation (1985);

*A. Scalia, Speech, Constitutional Interpretation the Old Fashioned Way (2005);

Recommended:

I. Kaufman, What did the Founding Fathers Intend? N.Y. Times Op-Ed (Feb. 23, 1986);

A. Scalia, Speech, Judicial Adherence to the Text of Our Basic Law (1996/2003);

N. Gorsuch, Of Lions and Bears, Judges and Legislators, and the Legacy of Justice Scalia (2016);

L. Greenhouse, The US Supreme Court, pp. 13-58.

Week 3: Liberty, Due Process, Equality, and Family Rights

Jan. 22: Liberty, Due Process, and Family Rights

**Meyer v. Nebraska* (1923)

Jan. 24: **Pierce v. Society of Sisters* (1925); **Skinner v. Oklahoma* (1942)

Week 4: Marital Liberty and Equality

Jan. 29: **Poe v. Ullman* (1961), Brennan, J., concurring, and Harlan, J., dissenting (Part II);
**Griswold v. Connecticut* (1965)

Jan. 31: **Loving v. Virginia* (1967); **Eisenstadt v. Baird* (1972)

Week 5: Liberty, Equality, and Reproductive Rights

Feb. 5: **Roe v. Wade* (1973); *R.B. Ginsburg, Some Thoughts on Autonomy and Equality In
Relation to *Roe v. Wade* (1985);

Feb. 7: **Planned Parenthood v. Casey* (2003); **Whole Woman's Health v. Hellerstedt* (2016)

Recommended Reading:

M. Goodwin, Troubling Legislative Agendas: Leveraging Women's Health Against
Women's Reproductive Rights, ACS Issue Brief (July 2017);

L. Greenhouse, The United States Supreme Court: A Very Short Introduction, pp. 72-82.

Week 6: The Constitutional Right to Same-Sex Marriage

Feb. 12: **Bowers v. Hardwick* (1986); **Lawrence v. Texas* (2003)

Feb. 14: **Obergefell v. Hodges* (2015)

Week 7: Review of Substantive Due Process and the Living Constitution

Feb. 19: Presidents' Day – no lecture

Feb. 21: **MIDTERM EXAM**

Week 8: Equality and Education

Feb. 26: **Brown v. Board of Education (Brown I)* (1954); **Brown v. Board of Education
(Brown II)* (1955)

Feb. 28: **Cooper v. Aaron* (1959)

Week 9: Is There A Fundamental Right to a Basic Education?

Mar. 5: **Milliken v. Bradley* (1974); **San Antonio Ind. School Dist. v. Rodriguez* (1973)

Mar. 7: **Plyler v. Doe* (1982)

Week 10: Spring Break

Mar. 12: no class

Mar. 14: no class

Week 11: Do Courts and Lawyers Matter?

Mar. 19: Lawyers, Courts, and School Reform

*G. Rosenberg, Tilting at Windmills: *Brown II* and the Hopeless Quest to Resolve Deep-Seated Social Conflict Through Litigation, 24 *Law & Inequality* 31 (2006);

* D. Garrow, Hopelessly Hollow History: Revisionist Devaluing of *Brown v Board of Ed.* (1994).

*Complaint in *Gary B. v Snyder* (filed Sept. 2016) (pp. 1-17);

*G. Stone, Are Detroit's Terrible Schools Unconstitutional? *N.Y. Times*, Op-Ed (Oct. 21, 2016).

Recommended reading:

D. Cole, *Engines of Liberty: The Power of Social Activists to Make Constitutional Law* pp. 1-94 (Basic Books 2016);

Daniel Cox, *Gay Marriage Won, But Other Liberal Causes Will Probably Struggle to Copy Its Success* (posted May 11, 2016), available on fivethirtyeight.com;

Mar. 21: Lawyers and Individual Rights – Introduction to the Death Penalty

*J.P. Stevens, *On the Death Sentence* (TNYRB, Dec. 2010)

- PAPER TOPIC DUE BY 12:00 pm NOON TODAY -

Week 11: The Death Penalty; Immigration, and who is a “person” entitled to Due Process?

Mar. 26: **McCleskey v. Kemp* (1987)

Mar. 28: **Glossip v. Gross* (2015); *J. Rakoff, *Will the Death Penalty Ever Die?* (TNYRB June 2017)

Week 12: Who is a person under the Due Process Clause?

Apr. 2: **U.S. ex rel. Knauff v. Shaughnessy* (1950); **Kleindienst v. Mandel* (1972).

Apr. 4: **Kerry v. Din* (2015); *Excerpts of briefs for the United States and for Fauzia Din

Week 13: Immigration, Due Process, and America

Apr. 9: *Kerry v. Din* – oral argument

Apr. 11: **Trump v. IRAP* (June 26, 2017) (per curiam);

Week 14: Supreme Court Arguments, Lawyers in the Community, and Unmet Needs

April 16: *Jennings v. Rodriguez* (2017-18) (excerpts of supplemental briefs on due process);

- **COMPLETED PAPER DUE BEFORE MIDNIGHT (by 11:59 pm) TODAY** -

April 18: Oral Argument in *Jennings v. Rodriguez*

Week 15: Looking Forward, Reflecting Back....

April 23: Cases to Watch in 2018

April 25: Reflections on Law and Society

*B. Cardozo, *The Nature of the Judicial Process*, pp. 161-80 (1921).

FINAL EXAM: May 7, 2018: 2:00 pm – 4:00 pm.

REQUIRED ADVISEMENT:

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences.

Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

USC has various programs and systems to support its students in responding to challenges. Please see the USC Statement on Academic Conduct and Support Systems, or visit the USC website, for further information.