CONSTITUTIONAL LAW I:
JUDICIAL REVIEW AND CONSTITUTIONAL INTERPRETATION
POLITICAL SCIENCE 307
FALL 2008

Course schedule

INTRODUCTION
8-25 Introduction: the debate over judicial review and popular constitutionalism
Kramer, The People Themselves, 3-34

PART ONE: WHAT IS A CONSTITUTION?
8-27 Whig republicans make law to control the government
Kramer, The People Themselves, 35-92

9-1 LABOR DAY (no class)

9-3 Do republican judges have a “special responsibility” for protecting constitutional rights?
Rakove, Original Meanings, 288-338

9-8 The problem of implied rights: Calder v. Bull
Course Pack: Calder v. Bull, 3 US 385-400 (1798)

9-10 CLASS DEBATE: Does a republican constitution contain unwritten rights?
Modern Constitutional Theory: A Reader, 157-170

9-12 MICRO-ESSAY #1 DUE IN CLA 251 BY 4 PM

PART TWO: WHO CAN AUTHORITATIVELY INTERPRET THE CONSTITUTION?
9-15 The first exercise of judicial review: Marbury v. Madison
Course Pack: Marbury v. Madison, 5 US 152-180 (1803)

9-17 Six approaches to constitutional interpretation
Course Pack: Marbury v. Madison, 5 US 152-180 (1803)
Modern Constitutional Theory: A Reader, 4-18

9-22 Is judicial review really judicial supremacy?
Course Pack: Eakin v. Raub 12 Sergeant & Rawle 352-4 (Pa. 1825)
Modern Constitutional Theory: A Reader, 214-266

9-24 CLASS DEBATE: Can judicial review be distinguished from judicial supremacy?
Kramer, The People Themselves, 93-226; 249-253

9-26 MICRO-ESSAY #2 DUE IN CLA 251 BY 4 PM

PART THREE: DUE PROCESS—JUDICALLY CONSTRUCTED CONSTITUTIONAL LAW
9-29 Avoiding the horns of the counter-majoritarian dilemma?
Course Pack: United States v. Carolene Products, 304 US 144-154 (1938)
Modern Constitutional Theory: A Reader, 18-50
10-1 How a right becomes law: the origins of the fundamental right to bodily privacy
*Modern Constitutional Theory: A Reader*, 125-157

10-6 Does the constitution contain a right to privacy?

10-8 **CLASS DEBATE:** Should due process be about policing the majority (a structural approach) or upholding fundamental values (an ethical approach)?
*Modern Constitutional Theory: A Reader*, 51-87; 683-711

10-10 **MICRO-ESSAY #3 DUE IN CLA 251 BY 4 PM**

**PART FOUR: PROBLEMS IN INTERPRETATION, ORIGINAL INTENT AND CHANGE**

10-13 Marshall’s masterpiece of constitutional interpretation
Course pack: *McCulloch v. Maryland* 17 US 400-435 (1819)
Rakove, *Original Meanings*, 161-202

10-15 The commerce power today
*Modern Constitutional Theory: A Reader*, 269-303

10-20 Holmes’ masterpiece of constitutional interpretation: Outlining a Supreme Court opinion
Course pack: *Missouri v Holland*, 252 US 430-435 (1919)

10-22 **CLASS DEBATE:** Which is the key constitutional argument in Holmes’ opinion?
Bobbitt, *Constitutional Interpretation*, 48-63

10-24 **MICRO-ESSAY #4 DUE IN CLA 251 BY 4 PM**

10-27 Debating the original intent of the contract clause

10-29 **CLASS DEBATE:** Who has the better view of the contract clause, Hughes or Sutherland?
*Modern Constitutional Theory: A Reader*, 91-125
Rakove, *Original Meanings*, 339-368

10-31 **MICRO-ESSAY #5 DUE IN CLA 251 BY 4 PM**

11-4 “Higher lawmaking” as a way to justify constitutional change: Were the Founders formalists?
Ackerman, *We the People*, 3-119

11-6 The exquisite formalist dilemma over the Reconstruction amendments
Ackerman, *We the People*, 120-252

11-8 How the Court justified the New Deal
Course pack: *Coleman v. Miller* 307 US 435-474 (1939)
Ackerman, *We the People*, 253-344
11-11 **CLASS DEBATE: Should the Supreme Court have decided the Election of 2000?**  
Kramer, *The People Themselves*, 227-248

11-13 **MICRO-ESSAY #6 DUE IN CLA 251 BY 4 PM**

PART FIVE: INTERPRETING THE WAR POWERS

11-18 Understanding the role of the executive  
*Modern Constitutional Theory: A Reader*, 355-395  
Rakove, *Original Meanings*, 244-287

11-20 The executive and the war powers  
Course pack: *Youngstown Sheet and Tube v. Sawyer* 343 US 582-614; 629-710 (1952)

11-22 Is the law silent during wartime?  
Course pack: *Ex Parte Merryman* 17 Fed Cases 144-153 (1861); *Ex Parte Milligan* 71 US 107-142 (1866)

11-24 Debating original intent, history, and structuralism in the war powers  
*Modern Constitutional Theory: A Reader*, 396-407  

11-25-12-1 Thanksgiving Break

12-1 A test case of executive power: the military commission during the Iraq War:  

12-3 **CLASS DEBATE: Who has the constitutional authority to dictate due process for enemy combatants?**  

12-5 **MICRO-ESSAY #7 DUE IN CLA 251 BY 4 PM**

12-10 **Final Exam 10:15 - 12:15**

**Course requirements**

A course pack, passed out on the first day of class, is a required text. It contains selections from many of the Supreme Court cases to be read for this class. Each student will be billed for a copy; those who drop the class after August 29 will still be billed.

The following texts are required of all students in this class. They are on sale at the IWU bookstore.

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The following articles and book chapters are on electronic reserve at Ames Library. The password is: legal (all lower case letters).


**Social contract**

Students are required to complete seven micro-essays (2-3 page)--the lowest grade is dropped.

60% micro-essays (10% each)
25% final exam
15% class participation

No student who misses as many as eight class sessions, for whatever reason, shall receive a passing grade. The class participation grade will begin to drop after 3 absences.

Students have the opportunity to revise every micro-essay once. *Students must visit me during office hours with their essay, and then visit me again with a draft of their revision before handing in their final version.* Revision grades will be averaged with the original grade for the final grade on the assignment. All such revisions must be handed in to me on or before the final class session (December 3rd).

**Office hours**

Jim Simeone
CLA 251 556-3126
TTh 4-5
W 9-11; 1-2

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Rakove, *Original Meanings*, 3-93

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